VOLUME I

(Pages 1 to 304)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS,

vs.

COURTNEY McCRACKEN, ET AL.

No. 123

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS,

vs.

CARL F. STEINER, ET AL.

No. 124

THE MADERA IRRIGATION DISTRICT, APPELLANT,

vs.

PHILLIP AND JANE E. ALBONICO.

No. 125

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT,

vs.

MAURICE A. BALAAM, ET AL.

APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED MAY 13, 1957

JURISDICTION POSTPONED OCTOBER 14, 1957

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., FEBRUARY 13, 1958

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[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF TULARE

No. 39627

THE IVANHOE IRRIGATION DISTRICT, an irrigation district, Plaintiff,

v.

ALL PARTIES AND PERSONS HAVING OR CLAIMING TO HAVE ANY INTEREST IN THE APPROVAL AND CONFIRMATION OF THE PROCEEDINGS FOR THE ORGANIZATION OF THE IVANHOE IRRIGATION DISTRICT, AND ALL PARTIES AND PERSONS IN ANY WAY INTERESTED IN THE CERTAIN CONTRACT DATED SEPTEMBER 23, 1949, ENTITLED "CONTRACT BETWEEN THE UNITED STATES AND THE IVANHOE IRRIGATION DISTRICT PROVIDING FOR WATER SERVICE AND FOR THE CONSTRUCTION OF A DISTRIBUTION SYSTEM" MADE BY AND BETWEEN THE UNITED STATES OF AMERICA AND THE SAID IVANHOE IRRIGATION DISTRICT, THE EXECUTION OF WHICH WAS AUTHORIZED AT AN ELECTION HELD IN SAID IRRIGATION DISTRICT ON AUGUST 23, 1949, AND THE PROCEEDINGS LEADING UP TO AND INCLUDING THE EXECUTION AND DELIVERY OF SAID CONTRACT; AND ALL PARTIES AND PERSONS HAVING OR CLAIMING ANY RIGHT, TITLE OR INTEREST IN OR LIEN OR CLAIM UPON OR AGAINST THE PROPERTY WITHIN SAID DISTRICT, OR ANY THEREOF, AND ALL REAL PROPERTY WITHIN SAID DISTRICT, Defendants.

COMPLAINT—Filed October 31, 1949

Action in rem to determine the validity of the organization of the District and of the authority to make and execute contract and validity thereof. Summons issued.

[fol. 2] For its cause of action the Ivanhoe Irrigation District, plaintiff herein, alleges:

I

That it now is, and ever since January 8, 1948, has been an irrigation district duly and regularly organized and existing as such a district, under and by virtue and in full compliance with the laws of California, and ever since the time of its organization it has been continuously acting as and exercising the rights, powers, privileges and authorities of such an irrigation district, and the land within its boundaries, comprising approximately 11,117 acres, is situated wholly within the County of Tulare, in this, the State of California, and ever since the time of its organization, the offices of its Board of Directors have been continuously located and maintained, and now are located and maintained at the Town of Ivanhoe, in this County and State.

II

Plaintiff district brings this action for the judicial determination of the validity of a certain contract made and executed on September 23, 1949, by and between the plaintiff District and the United States of America, providing for the delivery of a water supply from Central Valley Project and the Friant-Kern Canal to the District, by the United States of America and also for the design and construction of a distribution system for the District, by the United States of America Department of the Interior, Bureau of Reclamation, and setting forth the rights, duties and obligations of the respective parties with respect thereto, and the defendants herein are all parties and persons having, or claiming to have any interest in the judicial examination, approval and confirmation of:

[fol. 3] (1) All the proceedings had and taken for the organization of the plaintiff District, as an irrigation district; and

(2) All the proceedings leading up to and including the execution and delivery of the above mentioned contract; and

(3) The validity of the contract and of each and every term and provision thereof; and

(4) The right and authority of the respective persons signing the same and the parties thereto to so execute the contract; and said contract is in words and figures, the same as the copy thereof, hereto attached, marked "Exhibit 'A'" referred to and by such reference, incorporated herein for all purposes, the same as if herein fully set out, and as appears thereon, the contract was executed for and on the behalf of plaintiff District, by A. S. McKellar and Russell Davis, the President and Secretary, respectively, of its Board of Directors, in its name and under its seal, and for and on the behalf of the United States of America, by Richard L. Boke, the Regional Director for Region 2, of the Bureau of Reclamation of the United States Department of the Interior, and each of the persons so executing the contract on the behalf of the respective parties, acted in their respective official capacities as stated thereon, and within the scope and not beyond their respective authorities.

III

For a long time, to wit: for more than one year prior to the execution and delivery of said contract on September 23, 1949, the Bureau of Reclamation of the Department of the Interior of the United States of America, and the plaintiff District, had been negotiating a contract which would assure the District plaintiff of a dependable supply [fol. 4] of water and the design and construction of a distribution system, during which negotiations, several forms of contract were proposed and studied by the respective parties and subsequently and as a result of such negotiations and studies and on May 24, 1949, the final form of said contract, then identified by the mark: "Sacramento Office Draft, 3-8-49 Rev. W.O. 4-27-49," was proposed to and accepted by the plaintiff District, which acceptance was by the resolution of its Board of Directors regularly passed and adopted at the adjourned regular meeting of said Board, held on May 24, 1949, and by which resolution, the contract as proposed was accepted by the District and the submission of the same to the Districts Securities Commis-

sion of the State of California, for its examination, report and approval, as required by law, was authorized and directed and the said resolution was and is in words and figures the same as the certified copy thereof, hereto attached, marked Exhibit "B" referred to and by such reference, incorporated herein, for all purposes, the same as if here fully set out, and the form of contract therein mentioned or referred to is the same as is hereinabove referred to and hereto attached as "Exhibit "A".

IV

Thereafter, and pursuant to the above mentioned resolution of May 24, 1949, as passed and adopted by the Board of Directors of plaintiff District, the above mentioned contract was duly and regularly submitted to the Districts Securities Commission of the State of California, for its examination, report and approval and thereafter and on July 7, 1949, and by the report, order and decision of said Commission, regularly made at San Francisco, the said Contract was approved by it, which report, order and decision is in words and figures the same as the copy thereof, [fol. 5] hereto attached, marked "Exhibit "C" referred to and by such reference, incorporated herein for all purposes the same as if fully set out.

V

Thereafter and pursuant to the above mentioned resolution of May 24, 1949, copy of which being the above mentioned "Exhibit B," and in pursuance of the further resolution of the Board of Directors of the plaintiff District, duly passed and adopted at the regular meeting of said Board, held on July 19, 1949, a special election was regularly called to be held in said district on August 23, 1949, for the purpose of submitting to the qualified electors of plaintiff, the following proposition, to wit:

"PROPOSITION:—Shall the Ivanhoe Irrigation District enter into the proposed contract with the United States of America, approved by the Secretary of the Interior on April 27, 1949, and identified by the mark, "Sacramento Office Draft, 3-8-49, Rev. W.O. 4-27-49," which

contract was accepted by the District by the resolution and action of its Board of Directors adopted and taken on May 24, 1949, and thereafter, by its Order No. 1, approved by the California Districts Securities Commission, on July 7, 1949?

The proposed contract, copy of which is on file in the office of the District and shall remain on file and be available at all times during business hours for the inspection of any interested person which the privilege of making copy, and to which reference is made for further particulars, provides for a supply of water from Friant-Kern Canal and for the design and construction of a distribution system for the District.

With reference to the water supply, and in general [fol. 6] outline, the contract provides for the water supply for a term of forty years, and of that term, the first five years are made a trial period, during which period the quantities of water to be delivered and paid for are not fixed, but are determined by need and conditions, and thereafter, during the remaining term of the contract, and unless the commitment be modified by mutual consent, the United States of America is obligated to deliver and the District required to accept and pay for 7700 acre feet of Class 1 water, and to the extent the same is available and subject to the limitations and conditions expressed in the contract, Class 2 water not to exceed 7900 acre feet, per year, at the maximum rate of $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, payable in advance, and the annual payment required of the District, exclusive of penalties and interest for such water, cannot exceed $38,700.00, and the times, terms and conditions under which the water is to be delivered and for which payment is to be made by the District and the rights and obligations of each party to the contract are fully set forth in the contract.

With reference to the design and construction of the distribution system and in general outline, the contract provides for the design and construction of a distribution system providing for delivery of water to each

unit of a total of approximately 10,000 acres of irrigable land in the district at a cost not to exceed $1,589,807.00, which money will be advanced by the United States of America, and the actual cost repaid by the [fol. 7] District, without interest, in forty successive equal annual installments, commencing in the year following the second year after the distribution system is so far completed as to be available for use. Provision is also made whereby the District is obligated to pay certain operation and maintenance costs to the United States, and also certain costs of administration, supervision, inspection and for repairs of and to the distribution system incurred by the United States. Provision is also made whereby the operation of the distribution system, when a certain stage or stages of completion is attained, will be turned over to the District. During the period of repayment, the annual payment to the United States, required of the District, exclusive of penalties and interest, for or in connection with said distribution system, will not exceed $39,745.00, for repayment, and an additional annual payment estimated to be not in excess of $2,500.00 on account of the operation and maintenance, inspection, supervision, administration and repairs above mentioned, and the times, terms and conditions under which the distribution system is to be designed, constructed, operated, maintained and turned over to the District and payments thereon, or on account thereof made are fully set forth in the contract.

The contract also contains provisions whereby the District in certain circumstances, shall convey certain rights-of-way, if any, not included in the distribution [fol. 8] system cost, to the United States, where necessary in connection with the distribution system.

The proposed contract is made under and pursuant generally to the Act of Congress of June 17, 1902 (32 Stats. 388) and acts amendatory thereof and supplemental thereto, as authorized by the laws of California, and its terms are in general such as comply with and conform to the provisions of the law."

and said special election was duly called, noticed and held and it was legally and fairly conducted, all in the manner provided by law, and thereafter, and upon the canvass of the votes cast at said election it was found and determined that at said election a total of 251 votes were cast by qualified electors of which total 218 votes were cast in favor of and 33 votes were cast against the proposition submitted thereat, and said election being so legally called, noticed and held, and fairly conducted, all in the manner provided by law, the execution of the above mentioned contract with the United States of America, was thereby duly authorized by the qualified electors of plaintiff District, as provided by law.

VI

Subsequently, and in pursuance of the above mentioned resolution of May 24, 1949, copy of which being hereto attached and marked "Exhibit B" and in further pursuance of the resolution of the Board of Directors of plaintiff District, which was regularly passed and adopted at the regular meeting of the Board, held on August 29, 1949, a copy of which resolution being attached to the above mentioned Exhibit "A" as a part thereof, and on September 23, 1949, the above mentioned contract with the United [fol. 9] States of America, which is the contract in words and figures the same as Exhibit "A", hereto attached, and now and since further identified by the additional number and mark, "I—75 r. 1809, was regularly executed by the parties thereto by the persons whose signatures are thereunto subscribed by, for and on behalf of the respective parties, as aforesaid.

VII

The lands within plaintiff District, are situated entirely within this, the County of Tulare, and the gross area within its boundaries comprises 11,117 acres approximately, of which acreage approximately 9,968 acres are irrigable, of which irrigable acreage approximately 8,865 acres are presently irrigated and the remainder of the irrigable acreage is capable of, and if water were available, would, according to the information and belief of plaintiff, be developed into irrigated land for the production of crops

of great value, and to the immediate benefit of the district and the inhabitants and tax payers thereof and to the promotion of the welfare and best interests of the State and of the United States.

At the present time, the rural population of the District comprises approximately 1,000 persons and with the development of the irrigable, but presently unirrigated acreage, it is estimated by the plaintiff District that the rural population of the District will be increased to 1,150 persons approximately.

The rainfall beneficially available for the production of crops within the plaintiff District, normally amounts, according to the calculated estimation of qualified persons and the information and belief of plaintiff District, to 0.48 [fol. 10] acre feet per year, and with the exception of the rainfall and a small and here insignificant amount of water derived from Wutchumna Ditch, all of the water presently available for the irrigation of land within the District is derived from the underground by means of wells and pumps operated by the land owners or occupiers or water users within the District, and the total amount of water required for the irrigation of the lands within the District which are presently irrigated, is 23,667 acre feet (2.67 acre feet per acre) approximately per year on the average and under conditions of full development of the irrigable acreage within the District, it is the information and belief of plaintiff District that the amount required will be increased to 26,987 acre feet (2.71 acre feet per acre) per year, on the average.

The lands within plaintiff District are situated and overlie a geological formation or subsurface structure from which all of the water presently pumped for the irrigation of lands within the plaintiff District is derived, and as a result of the lifting of water from said underground by pumps, more water is removed therefrom than is by nature restored in each year, and the aggregate amount of such accumulated over-draft, since 1922, is more than 39,600 acre feet, and the amount of such over-draft is steadily and continuously increasing.

It is therefore, necessary that a supplemental supply of water be obtained in order to preserve the life of the Dis-

trict and to make the development of the lands within its boundaries possible and the only source from which such necessary water can be had is through the United States of America, from Central Valley Project, and the above mentioned contract with the United States of America, of which approval is herein sought, provides [fol. 11] for, among other things, the furnishing of such additional and supplemental water to plaintiff District.

VIII

As will likewise appear by its terms, the contract also provides for the design and construction of a distribution system for the plaintiff District, and all of the rights and obligations of the parties to the contract are therein set forth in the words and figures which are the same as Exhibit "A" hereto attached.

IX

Plaintiff district is located within the area commonly called the "Central Valley" in this State, which area is an arid one, and in which the natural supply of water is not adequate for the maintenance of its present development and productivity. The District and the whole of the "Central Valley" is fertile and has produced and is producing food and agricultural products of great value and importance to the welfare of the District, the area, the State of California and of the United States of America, and, with the growth of the population of the area and of the State and of the United States of America, it has become and will continue to be of increasingly greater importance and significance to the welfare of the District and of the State of California and of the United States of America, as an area from which essential food and other agricultural products necessary to the maintenance of their health and welfare may be produced.

Upon considerations such as these, the people of the State of California and of the United States of America, each as sovereigns and in the exercise of their respective [fol. 12] sovereign powers, have each by law made provision for the supply of water necessary to the maintenance

and growth of the Central Valley area, of which plaintiff District is a part, and the above mentioned contract is made pursuant to and in compliance with the laws of the State of California, and of the United States of America, so made in the pursuit of their common welfare.

X

That in each and every act or proceeding of the Board of Directors of the plaintiff District hereinabove mentioned, and in each and every official act or proceeding of its Board of Directors connected with or leading up to the making, execution and delivery of the contract, the same were, in each and every case, done or performed by that Board at meetings regularly called and held at the usual place for the holding of such meetings, to wit: at the offices of said Board located in the Town of Ivanhoe, in this County and State, and at each and every such meeting, a quorum, to wit: a majority or more of the members were present and participating and voted in favor of the action taken, and in all things connected with the making, execution and delivery of said contract, the plaintiff District and its officers, directors and agents acted in good faith and in the pursuance of that which was, in each instance, by them deemed to be, and is still deemed to be, to and for the best interests and advantage of the District and the inhabitants thereof, and the land owners, assessment payers, water users and all other persons interested therein, and in all things connected with the making and execution of the contract, the respective parties thereto and the persons who executed the same by and for and on the behalf of the respective parties, acted only within [fol. 13] and not beyond the powers and authorities in them by law vested and within the time and upon the notice or notices duly given, in the manner and form required or provided by law, and not otherwise, and all acts and things and conditions required by law precedent to the execution and delivery of the contract and its authorization, to be done, performed, happen or exist, were done, performed, did happen and did exist all in due time and in the form and manner required by law, and the contract

above mentioned, and as the same is executed is in all respects, the legally valid act of the parties thereto and binding upon, in favor of and against the Ivanhoe Irrigation District and the United States of America, and this action is commenced in pursuance of the resolution of the Board of Directors of the Plaintiff District as passed and adopted on September 7, 1949, certified copy of which being hereto attached, referred to and by such reference, incorporated herein.

Wherefore, plaintiff prays judgment:

1. That an order be made directing the Summons as issued herein, be served by publication in a newspaper to be designated by the Court, for such time and in such manner as may be required by law; and

2. That this Court examine and inquire into all of the acts and proceedings had and taken for the organization of the plaintiff District and all of the acts or proceedings had or taken in connection with and leading up to and including the execution and delivery of the above mentioned contract and also examine and inquire into the validity of the contract and of every term and provision thereof, and of the right and authority of the respective parties thereto to execute the same and also of the right and authority of the respective persons who signed or exe- [fol. 14] cuted the same, for and on the behalf of the respective parties thereto; and

3. That upon such examination and inquiry and upon the proofs to be adduced, this Court make and enter its judgment and decree herein approving and confirming the proceedings had for the organization of plaintiff as an irrigation district and determining that it was and is duly and legally organized and exists as such an irrigation district and likewise approving and confirming all of the steps and all of the acts and proceedings had or taken and leading up to and including the execution and delivery of the above mentioned contract and determining that the same and all and each and every one of the terms and provisions thereof, are legally valid and binding upon, against and in favor of the parties thereto and, that such other and

further orders and decrees may be made as to the Court shall seem just, wise or necessary in the premises.

E. I. Feemster, and Jas. R. McBride, by Jas. R. McBride, Attorneys for Plaintiff, Ivanhoe Irrigation District.

EXHIBIT A TO COMPLAINT

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Contract Symbol & Number
175r-1809

Central Valley Project, California

[fol. 15] CONTRACT BETWEEN THE UNITED STATES AND THE IVANHOE IRRIGATION DISTRICT PROVIDING FOR WATER SERVICE AND FOR THE CONSTRUCTION OF A DISTRIBUTION SYSTEM

ARTICLE	TITLE
1	Preamble
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9	Definitions
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11	Water to be Furnished to District
12	Time for Delivery of Water
13	Rate and Method of Payment for Water
14	Adjustments
15	Point of Delivery, Measurement and Responsibility for Distribution of Water
16	United States not Liable for Water Shortage
17	Use of Water Furnished to District

Part B

18 Construction of Works and Limit of Expenditures Therefor
19 Payment by District
20 Development Period
21 Estimated Cost of Operation and Maintenance to be Paid in Advance
22 Transfer of Operation and Maintenance to
[fol. 16] District—United States to be Held Harmless
23 District to Pay Certain Miscellaneous Costs Relating to Transferred Works
24 Computation of Costs

End of Part B

25 Agreed Charges a General Obligation of the District
26 All Benefits Conditioned upon Payment
27 Levy of Taxes and Assessments—Fixing of Rates and Tolls
28 Refusal of Water in Case of Default
29 Penalty upon Delinquency in Payment
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31 Inspection of Books and Records
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33 Title to Remain in the United States
34 Land not to Receive Service from Distribution System or Water Furnished to District by United States until Owners thereof Execute Certain Contracts
35 Valuation and Sale of Excess Lands
36 Excess Lands
37 Amendment of Federal Reclamation Laws
38 Contingent upon Appropriations or Allotments of Funds
[fol. 17] 39 Officials not to Benefit
40 Notices
41 Assignment Prohibited: Successors and Assigns Obligated: Default

42 Assurance Relating to Validity of Contract
43 Performance of Work with Contributed Funds

Sacramento Office Draft
3-8-49
Rev. W. O. 4-27-49

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Contract Symbol & Number
175r-1809

Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND THE IVANHOE IRRIGATION DISTRICT PROVIDING FOR WATER SERVICE AND FOR THE CONSTRUCTION OF A DISTRIBUTION SYSTEM

1. This CONTRACT, made this 23rd day of September, 1949, in pursuance generally of the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all collectively herein styled the Federal reclamation laws, between THE UNITED STATES OF AMERICA, herein styled the United States, represented by the Secretary of the Interior, and the IVANHOE IRRIGATION DISTRICT, a political subdivision of the State of California, duly organized, existing and acting pursuant to the laws [fol. 18] thereof, with its principal place of business in the City of Ivanhoe, State of California, herein styled the District,

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States is constructing the Central Valley Project for diversion, storage, carriage, distri-

bution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, generation and distribution of electric energy, salinity control, navigation and other purposes, of waters of the Sacramento River and San Joaquin River and their tributaries; and

3. WHEREAS, the United States proposes to construct and operate the Friant-Kern Canal, which will be used, in part, for the furnishing of water to the District pursuant to the terms of this contract; and

4. WHEREAS, the District desires to contract, pursuant to the Federal reclamation laws and the laws of the State of California, for the furnishing by the United States of a supplemental water supply from the Project for which the District will make payment to the United States upon the basis, at the rates, and pursuant to the conditions hereinafter set forth; and

5. WHEREAS, investigations of the District lands and present water supply indicate that irrigated and irrigable lands within the boundaries of the District are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation, and that ground water underlying the District is seriously depleted and in need of replenishment and that an additional water supply to meet these present and potential needs can be made available by and through the works constructed and to be con-[fol. 19] structed by the United States; and

6. WHEREAS, investigations of the stream flow in the Sacramento River and the San Joaquin River and their tributaries indicate that there will be available for furnishing to the District from the Friant-Kern Canal an additional water supply for surface diversion and direct application for irrigation, and directly or indirectly to replenish depleted ground waters underlying the District; and

7. WHEREAS, the District, in order to utilize the water supply made available from the Central Valley Project under Part A of this contract and such future contracts as may be made between the United States and the District, desires that a general distribution and lateral system

be constructed for the District by the United States acting by and through the Bureau of Reclamation, United States Department of the Interior, pursuant to the Federal reclamation laws; and

8. WHEREAS, the United States is willing to undertake the construction of the aforementioned distribution system under the conditions hereafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "contracting officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

[fol. 20] (b) "Project" shall mean the Central Valley Project, California, of the Bureau of Reclamation;

(c) "initial delivery date" shall mean the date announced by the Secretary on which water first will be available for furnishing to the District by means of the Friant-Kern Canal pursuant to Part A of this contract;

(d) "year" shall mean the period from and including March 1 of each calendar year through the last day of February of the following calendar year;

(e) "calendar year" shall mean the period from January 1 through December 31, both dates inclusive;

(f) "Part A" shall mean Articles 10 through 17;

(g) "Part B" shall mean Articles 18 through 24;

(h) "contract" shall mean Articles 1 through 43;

(i) "Class 1 water" shall mean that supply of water at Friant Dam and Reservoir which, subject to the

contingencies described in Article 16 hereof, will be available for delivery from the Friant-Kern and Madera Canals and the San Joaquin River as a dependable water supply during each irrigation season;

(j) "Class 2 water" shall mean that supply of water which becomes available in addition to the supply of Class 1 water and which, because of its uncertainty as to availability and time of occurrence, will be undependable in character and will be furnished only if, as, and when said water is available as determined by the United States.

Part A

TERM OF PART A OF CONTRACT

[fol. 21] 10. The term of Part A shall extend for a period of forty (40) years, including the year in which the initial delivery date occurs.

WATER TO BE FURNISHED TO DISTRICT

11. (a) After the initial delivery date and until March 1 of the year following the completion of the distribution system as announced by the contracting officer as prescribed in Article 18 (b), or for a period of five years after March 1 of the year following that in which the initial delivery date occurs, whichever is the longer period, the United States will furnish to the District and the District each year will accept and pay, as provided in Article 13, for Class 1 and Class 2 water from the Friant-Kern Canal in the quantities specified in a schedule submitted by the District in accordance with Article 12 (a) for such year: *Provided,* That no Class 1 water shall be furnished to the District and the District shall not be obligated to accept and pay for Class 1 water until the date, announced by the contracting officer, that the facilities necessary for furnishing Class 1 water have been completed, and after said date no more than 51 percent of the total quantity of water called for by the District during any such year in the aforesaid schedule shall be Class 2 water, nor shall the United States be obligated to furnish more than 7,700 acre-feet of Class 1 water during any such year.

(b) In the year commencing on March 1 of the year following the completion of the distribution system as announced by the contracting officer as provided in Article 18 (b), or the sixth year from March 1 of the year in which the initial delivery date occurs, whichever is the later, and each year thereafter during the remainder of the term of Part A, the United States shall furnish to the District and the District shall accept and pay for, as pro-
[fol. 22] vided in Article 13 (a) hereof, 7,700 acre-feet of Class 1 water: *Provided,* That the parties hereto may, by mutual agreement at any time or times after the initial delivery date, increase or decrease the amount of Class 1 water required thereafter to be furnished each year to the District by the United States during the remainder of the term of Part A.

(c) In addition to the quantity of Class 1 water set forth in subdivision (b) of this article, the United States shall furnish to the District and the District shall accept and pay for Class 2 water, to the extent that it is available as determined by the contracting officer, each year during the portion of the term of Part A of this contract remaining after written notice has been furnished by the District to the United States of the District's desire to receive such Class 2 water pursuant to this subdivision: *Provided,* That in no event shall the District be obligated or entitled to receive more than 7,900 acre-feet of Class 2 water during each such year: *Provided further,* That, upon the furnishing of any such notice or notices by the District to the United States, the District each year thereafter shall be obligated to accept and pay for and the United States shall be obligated to furnish the quantity of Class 2 water specified in the notice, to the extent that it is available therefor as determined by the contracting officer, unless such quantity is reduced by written agreement of the parties. Such notice or notices may be furnished by the District until 7,900 Acre-feet of Class 2 water is required to be furnished to and accepted and paid for by the District each year. No such notice shall be valid or effective unless it is received by the United States on or before November 1 preceding
[fol. 23] the year in which such notice is to become effective

and in no event shall any such notice be valid or effective if received by the United States later than March 1 of the fifteenth year after the year in which the initial delivery date occurs. The District shall not be obligated to accept more than 1,500 acre-feet of Class 2 water during any period of thirty (30) consecutive calendar days.

TIME FOR DELIVERY OF WATER

12. (a) The District shall submit in writing to the contracting officer on or before March 1 of each year a schedule, subject to the provisions of Article 11 hereof and satisfactory to the contracting officer, indicating the desired times and quantities for the delivery of all Class 1 and Class 2 water pursuant to this contract during such year and the United States shall, within the provisions hereof, attempt to deliver said water in accordance with said schedule, or any revision thereof satisfactory to the contracting officer submitted by the District within a reasonable time before the desired change of the time for delivery, as nearly as may be feasible as conclusively determined by the contracting officer.

(b) The District may, with the written consent of the contracting officer, in any year exchange water with any other District which has contracted with the United States for water from the Project. No sale or other disposal by the District for use outside the District of any water, or the right to the use thereof, furnished to the District pursuant to this contract shall be valid without the contracting officer's written consent thereto.

RATE AND METHOD OF PAYMENT FOR WATER

[fol. 24] 13. (a) The contracting officer will, on or before February 15 of each calendar year, by written notice, notify the District of the rates of payment to be made by the District for all water to be delivered to it pursuant to this contract during the ensuing year, but in no event shall the rates so announced be in excess of $3.50 per acre-foot for Class 1 water and $1.50 per acre-foot for Class 2 water.

(b) The District shall, each year during the period described in Article 11 (a) hereof, in advance of the delivery of any water for said year make payments for all Class 1 and Class 2 water requested by the District in the schedule submitted as aforesaid at the rates fixed in the manner provided in (a) of this article.

(c) During the period described in Article 11 (b), the District shall, each year in advance of the delivery of water for said year, make payment to the United States, at rates fixed as provided in (a) of this article for all Class 1 and Class 2 water which the District is required to receive pursuant to the provisions of said Article 11 (b). Such payments by the District shall be made on or before March 1 or such other date, prior to the time for commencement of delivery of such water, of the respective year as may be specified by the contracting officer in written notice to the District.

(d) In the event the District fails or refuses to accept delivery of the quantities of water available for delivery to and required to be accepted by it pursuant to this contract, or in the event the District in any year, during the period described in Article 11 (b) hereof, fails to submit a schedule for delivery as provided in Article 12 (a) of this contract, said failure or refusal shall not relieve the District of [fol. 25] its obligation to pay for said water and the District agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this contract.

(e) Water furnished to the District during any month designated in the schedule submitted by it pursuant to Article 12, for the furnishing of water to the District, shall be deemed to have been accepted as Class 1 water to the extent that Class 1 water is called for in said schedule for said month and all water furnished to the District in excess of the amount of Class 1 water called for in said schedule for said month shall be deemed to have been accepted as Class 2 water. Water available for furnishing to the District in accordance with the approved schedule and not accepted by the District shall be deemed to have been ac-

cepted by the District in accordance with the aforesaid schedule.

ADJUSTMENTS

14. The amount of any overpayment by the District by reason of the quantity of water actually available for the District during any year, as conclusively determined by the contracting officer, having been less than the quantity of such water which the District otherwise under the provisions of this contract would have been required to receive and pay for, shall be applied first to any accrued indebtedness arising out of Part A then due and owing to the United States by the District and any amount of such over-payment then remaining shall, at the option of the District, be refunded to the District or credited upon amounts to become due to the United States from the District under the provisions of Part A in the ensuing year.

POINT OF DELIVERY, MEASUREMENT AND
[fol. 26] RESPONSIBILITY FOR DISTRIBUTION OF WATER

15. (a) The water to be furnished to the District pursuant to this contract will be delivered at Friant-Kern Canal at such points as may be mutually agreed upon in writing by the contracting officer and the District: *Provided,* however, That in the event that the United States shall have reached the construction of the portion of the Friant-Kern Canal, which probably will embrace such points, and the location has not been so agreed upon such points shall be established at locations as, in the conclusive determination of the contracting officer will best serve the needs of the District.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to (a) of this article and with equipment installed, operated, and maintained by the United States. Upon the request of the District, the accuracy of such measurements will be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution

of water which may be furnished to the District hereunder, outside the facilities then being operated and maintained by the United States, nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water outside of such facilities: *Provided,* That the United States reserves the right to all waste, seepage, and return flow water derived from water furnished to the District hereunder and which escapes or is discharged [fol. 27] beyond the District's boundaries and nothing herein shall be construed as an abandonment or a relinquishment by the United States of any such water, but this shall not be construed as claiming for the United States any right, as waste, seepage, or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the District's boundaries by the District or those claiming by, through, or under the District.

(d) Notwithstanding any provision of this contract to the contrary, the United States shall not be obligated to furnish either Class 1 or Class 2 water to the District pursuant to Part A unless and until the construction by the United States of facilities to the extent required for furnishing of the respective class of water to the District has been completed as conclusively determined by the contracting officer.

(e) The United States may temporarily discontinue or reduce the amount of water to be furnished to the District as herein provided for the purposes of such investigation, inspection, maintenance, repair, or replacement as may be necessary of any of the Project facilities necessary for the furnishing of water to the District or any part thereof but so far as feasible the United States will give the District due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need by given. In the event of any such discontinuance or reduction, the United States will, upon the resumption of service, attempt to approximate the quantity of water which would have been furnished to the District in the absence of such contingency.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

16. (a) There may occur at times a shortage during any [fol. 28] year in the quantity of water available for furnishing to the District by the United States pursuant to this contract through and by means of the Project and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of errors in operation, drought or unavoidable causes. In no event shall the United States (A) deliver from Friant Dam in any year any Class 2 water pursuant to this or any other contract heretofore or hereafter entered into involving the same Project water supply, until the contracting officer shall have determined that the quantity of Class 1 water required to be delivered to the District from Friant Dam hereunder and to others under any such other contract will be available for delivery in said year, nor (B) execute contracts which, together with this contract, shall in the aggregate provide for furnishing during the life of this contract Class 1 water from Friant Dam in excess of 800,000 acre-feet per year. In any year in which there may occur a shortage from any cause, the United States reserves the right to apportion the available water supply among the District and others entitled, under existing and future contracts, to receive Class 1 water from Friant Dam in accordance with conclusive determination of the contracting officer as follows:

(i) A determination shall be made of the total quantity of Class 1 water agreed to be accepted during the respective year under all contracts then in force for the delivery of Class 1 water through Friant-Kern and Madera Canals and the San Joaquin River from Friant Dam, the amount so determined being herein referred to as the Class 1 contractual commitments.

[fol. 29] (ii) A determination shall be made of the total quantity of Class 1 water at Friant Dam which is available for meeting Class 1 contractual commitments, the amount so determined being herein referred to as the available supply.

(iii) The total quantity of Class 1 water agreed to be accepted by the District during the respective year, under Article 11 hereof, shall be divided by the Class 1 contractual commitments, the quotient thus obtained being herein referred to as the District's contractual entitlement.

(iv) The available supply shall be multiplied by the District's contractual entitlement and the result shall be the quantity of water required to be delivered by the United States to the District for the respective year, but in no event shall such amount exceed the total quantity of Class 1 water agreed to be accepted by the District pursuant to Article 11 hereof.

In so far as determined by the contracting officer to be practicable, the United States will, in the event a shortage appears probable, notify the District of such determinations in advance of irrigation season.

(b) If there only is available, as determined by the contracting officer, for furnishing to the District pursuant to this contract less than the quantity of Class 2 water which the District otherwise would be entitled to receive pursuant to subdivision (a) or (c) of Article 11 hereof, the quantity of Class 2 water which shall be furnished to the District by the United States will be determined in the manner set forth in paragraphs (i), (ii), (iii), and (iv) of subdivision (a) of this article for apportioning Class 1 water in the event of a shortage.

[fol. 30] (c) In the event that in any year there is delivered to the District, by reason of any shortage or apportionment, as provided in subdivision (a) or (b) of this article, or any discontinuance or reduction of service as set forth in Article 15 (e) hereof, less than the quantity of water which the District otherwise would be entitled to receive hereunder, there shall be made an adjustment on account of the amounts paid to the United States by the District for Class 1 and Class 2 water for said year, in a manner similar to that provided for in Article 14 hereof. To the extent of such deficiency, such adjustment shall constitute the sole remedy of the District or any one having

or claiming to have by, through, or under the District, the right to the use of any of the water supply provided for herein. The United States does not guarantee the sale and delivery of any Class 2 water and such Class 2 water will be furnished and delivered to the District only if, as, and when said water is available for delivery to the District as conclusively determined by the contracting officer.

(d) The rights of the District under Part A of this contract are subject to the terms of the Contract for Exchange of Waters dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, and others, and recorded on the 18th day of September 1939, in the office of the County Recorder of

(i) Fresno County in Book 1810 of Official Records at Page 50;

(ii) Stanislaus County in Book 704 of Official Records at Page 1;

(iii) Merced County in Book 623 of Official Records at Page 417;

(iv) Madera County in Book 247 of Official Records at Page 113.

USE OF WATER FURNISHED TO DISTRICT

17. The District agrees that water furnished to it by [fol. 31] the United States pursuant to Part A will not be delivered or furnished by the District for any purpose other than agricultural purposes, including but not restricted to the watering of stock, or underground water replenishment without the written consent of the contracting officer.

Part B

CONSTRUCTION OF WORKS AND LIMIT OF EXPENDITURES THEREFOR

18. (a) To the extent that funds may now or hereafter be available by appropriation the United States will expend toward construction of a general distribution and lateral

system, surface drainage works, and other related distribution and surface drainage works, all collectively comprising and herein styled the distribution system, a sum not in excess of one million five hundred and eighty-nine thousand eight hundred and seven dollars ($1,589,807), or so much thereof as the contracting officer deems necessary for the completion of the distribution system. Said distribution system will not include the Friant-Kern Canal, the Friant-Kern Canal right-of-way, nor any facilities or structures located thereon. The distribution system will be constructed so as to provide facilities for the delivery of water from the Friant-Kern Canal to each unit of a total of approximately 10,000 acres of irrigable land, or such lesser area as may be agreed upon in writing by the contracting officer and the District, each unit for which said facility is to be provided to be as mutually agreed upon by the District and the contracting officer but in no event to comprise more than 160 acres of such land. The general area to be served, and the general type and layout of the distribution system shall be subject to the review and approval of the District, evi-[fol. 32] denced by a resolution of the District Board of Directors, prior to the commencement of construction of the distribution system.

(b) When the contracting officer notifies the District, in writing, that total expenditures have been made to the limit determined as provided in (a) of this article or so much thereof as the contracting officer considers necessary and useful for the construction of the distribution system as described in (a) of this article, the distribution system shall be deemed to have been completed within the meaning of this contract.

PAYMENT BY DISTRICT

19. (a) The District will repay to the United States the actual cost, but in no event in excess of one million five hundred and eighty-nine thousand eight hundred and seven dollars ($1,589,807) incurred by the United States, in providing the distribution system. The obligation defined in this subsection shall be referred to hereinafter as the construction obligation.

(b) The United States will invoke all legal and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it without cost to the District, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owner of the servient lands for the value of improvements which may be destroyed and the District agrees that the United States may include such disbursements in the cost of the distribution system to be repaid by the District. The District agrees to convey to the United States, on the request of the contracting officer, without cost, the unencumbered fee simple title to any and all lands owned by it or perpetual easements therein required for right-of-way purposes for the distribution system. Where rights-of-way are required [fol. 33] for works herein agreed to be constructed by the United States, and such rights-of-way are not reserved to the United States under acts of Congress or otherwise, and the lands over which such rights-of-way are required are not then owned by the District, then the District agrees that it will, upon request of the United States, acquire such lands, or perpetual easements therein, using in connection therewith such forms of contracts, deeds and other necessary papers as may be required by the United States, and purchases shall be only at prices that are satisfactory to the Secretary. Title shall be taken in the name of the United States, and on procuring execution of the necessary contracts, deeds and other papers, they shall be transmitted by the District to the United States by whom payment will be made, after title has been found satisfactory to the United States. Expenses incurred by the District in connection with acquisition above provided for shall, to the extent approved by the contracting officer, be paid to the District on the basis of annual statements submitted at the close of each calendar year, and shall be chargeable as part of the construction costs.

(c) The construction obligation shall be paid by the District in forty (40) successive, equal, annual installments the first of which shall become due in the year following the last year of the development period described in Article 20 hereof. Such installments shall be payable one-half thereof

on February 1 and one-half thereof on August 1. If the actual construction cost shall not have been determined by the Secretary when the first construction obligation installment shall have become due hereunder, he shall announce the estimated construction cost. Such estimated construction cost shall govern the amount of the construc-
[fol. 34] tion obligation installments herein referred to until such time as the actual construction obligation can be determined and a statement thereof furnished to the District. When notice of the actual construction obligation has been given to the District, installments coming due thereafter from the District shall be adjusted to reflect any difference between the estimated cost and the actual cost of the distribution system.

(d). The contracting officer may, at any time in his discretion, upon request of the District, evidenced by a certified copy of a resolution of the Board of Directors of the District, provide for dates upon which annual payments by the District of the District's construction obligation shall become due and payable other than and in lieu of those dates fixed for the payment of such annual installments as provided in (c) of this article.

DEVELOPMENT PERIOD

20. A development period for the lands in the District is hereby fixed at two (2) years from and including the first year in which the distribution system is so far completed as to be available for use, and water is available for furnishing to the District pursuant to Part A of this contract for substantially all of the irrigable lands in the District as announced by the Secretary in a written notice to the District setting forth the date of such availability. Such notice shall be furnished to the District at least six (6) months prior to the date of the commencement of the development period.

ESTIMATED COST OF OPERATION AND MAINTENANCE TO BE PAID IN ADVANCE

21. (a) During the time that the distribution system or
[fol. 35] any part thereof is being operated by the United

States, as provided in Article 22, commencing with the first year of the development period, and each calendar year thereafter the District will pay in advance to the United States not later than January 1, upon estimates therefor to be furnished by the United States on or before September 1 next preceding, the estimated cost of operation and maintenance for such calendar year. The surplus of any amount so advanced by the District for operation and maintenance by the United States during any calendar year shall be credited on future estimated cost of operation and maintenance by the United States: *Provided*, That any such operation and maintenance charges paid to the United States by the District during the development period which are in excess of the actual cost of the operation and maintenance of the distribution system by the United States for such development period shall be credited to the construction obligation of the District.

(b) Whenever in the opinion of the contracting officer the amounts available from payments made by the District of the estimated annual operation and maintenance charges will be inadequate properly to operate and maintain the distribution system to the end of any calendar year, he may give written notice to the District, herein styled supplemental operation and maintenance charge notice, stating therein the amount of additional advance payment of funds required for such operation and maintenance, and the District shall pay the amount thereof on or before the dates specified in such supplemental operation and maintenance charge notice.

(c) Any amount of said operation and maintenance payments by the District, for any year subsequent to the development period, remaining unexpended and unobligated in the possession of the United States on the effective date [fol. 36] of a transfer in whole or in part of the distribution system to the District for operation and maintenance, in accordance with Article 22 hereof, shall be refunded to the District.

(d) To the extent that the distribution system is operated and maintained by the United States, there shall be in-

cluded as a part of the operation and maintenance costs, as covered by the provisions of this article, such items for administration, supervision, inspection, replacement, and general expenses as properly are chargeable to such work in the opinion of the contracting officer.

TRANSFER OF OPERATION AND MAINTENANCE TO DISTRICT—UNITED STATES TO BE HELD HARMLESS

22. (a) On the date of the commencement of the development period, the District shall take over and at its own expense operate and maintain the distribution system or any part thereof described in a transfer notice to be furnished to the District by the Secretary. The District agrees to accept, upon the effective date of the transfer notice, the care, operation, and maintenance of the transferred works and thereafter, without expense to the United States, to care for, operate and maintain the transferred works and deliver water therefrom in full compliance with the Federal reclamation laws and the terms of this contract and in such manner that said works shall remain in as good and efficient condition for the development, diversion, and distribution of the aforesaid water supply as on the effective date of such transfer to the District. The District will use all proper methods to secure the economical and beneficial use of the water delivered by means of the distribution system.

(b) At any time prior to full payment of the construction [fol. 37] obligation that the contracting officer determines that the District has not cared for, operated, maintained, or delivered water from the transferred works in the manner as aforesaid, the United States may take back and operate and maintain such works, and the District hereby agrees to surrender possession of said works. The works so taken back for operation and maintenance by the United States may similarly be retransferred to the District, upon furnishing the District ninety (90) days' written notice of intention to retransfer. If any works are taken back by the United States at such time that funds for the operation and maintenance cannot be advanced in accordance with

the procedure set forth in Article 21 hereof, the District hereby agrees, on the basis of statements of estimates to be submitted by the contracting officer, to advance sufficient funds to provide for the operation and maintenance of such works until such funds can be provided under the procedure set forth as aforesaid in Article 21 hereof.

(c) No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the contracting officer. The District shall make promptly any and all repairs to the transferred works which, in the opinion of the contracting officer, are deemed necessary for the proper care, operation, and maintenance of the same. If at any time, in the opinion of the contracting officer, any part of the transferred works shall from any cause be in a condition unfit for service, he may order that the water be turned out and shut off from that part of the distribution system until, in his opinion, such property is put in proper condition for service. In the event the District neglects or fails to make such repairs, [fol. 38] the United States may cause the repairs to be made and may charge the cost therefor to the District, which charge the District shall pay in the manner provided in Article 23 hereof. The District shall provide for the collection of sufficient operation and maintenance or toll charges to pay all such bills to the United States within the time states herein in addition to providing the necessary funds to meet the other obligations of the District.

(d) The United States may cause to be made from time to time, but in any event no more than three times per year, a reasonable inspection of the transferred works to ascertain whether the terms of this contract are being executed by the District. Such inspection shall include examination of the transferred property and of the books, records, and papers of the District together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records, and programs connected with the said property. The actual expenses of such inspections and examinations shall be paid by the District to the United States in the manner provided in Article 23 hereof.

(e) No liability shall accrue against the United States, its officers and employees because of damages caused by the operation of the distribution system by the District.

District to Pay Certain Miscellaneous Costs Relating to Transferred Works

23. In addition to the other payments to be made by the District as provided by this contract, the District shall pay to the United States, on or before April 1 of the calendar year following that in which the same shall have been incurred and a statement thereof furnished by the United [fol. 39] States, the following costs:

(a) Such items of cost incurred by the United States in connection with the distribution system for administration, supervision, and inspection during the time the distribution system is operated and maintained by the District and for the period covered by the statement;

(b) The cost of repairs to transferred works made by the United States as provided in Article 22 hereof.

Computation of Costs

24. The actual cost of the distribution system, which will constitute the District's construction obligation, shall embrace all expenditures of whatsoever kind in connection with, growing out of, or resulting from work performed in connection with the distribution system, including but not limited to the cost of labor, material, equipment, engineering, and legal work, superintendence, administration and overhead, rights-of-way, property and damage of all kinds, and shall include all sums expended by the Bureau of Reclamation in surveys and investigations in connection with the irrigation of District lands, both prior to and after the execution of this contract, and the expense of all soil investigations and other preliminary work. The determination of what costs are properly chargeable hereunder, and the amount thereof shall conclusively be made by the contracting officer.

End of Part B

AGREED CHARGES A GENERAL OBLIGATION OF THE DISTRICT

25. The District as a whole is obligated to pay to the [fol. 40] United States the charges becoming due as provided in this contract notwithstanding the individual default in the payment to the District by individual water users of assessments, tolls or other charges levied by the District.

ALL BENEFITS CONDITIONED UPON PAYMENT

26. Should any assessment or assessments levied by the District against any tract of land or water user in the District and necessary to meet the obligations of the District under this contract be judicially determined to be irregular or void or should the District or its officers be enjoined or restrained from making or collecting any assessments upon such land or from such water user as provided for herein, then such tract shall have no right to any of the benefits of this contract, and no use shall be made of the distribution system nor any water made available by the United States pursuant hereto be furnished for the benefit of any such lands or water users, except upon the payment by the landowner of his assessment or a toll charge for the use of the distribution system or such water, notwithstanding the existence of any contract between the District and the owner or owners of such tract. Contracts, if any, between the District and the water users involving service from the distribution system or water furnished pursuant to this contract shall provide that such use shall be subject to the terms of this contract. It is further agreed that the payment of charges at the rates and upon the terms and conditions provided for herein, is a prerequisite to the right to service from the distribution system or water furnished to the District pursuant to this contract; and no irregularity in leving taxes or assessments by the District, nor lack of authority in the District, whether affecting the validity of District taxes or assessments or not, shall be held to au- [fol. 41] thorize or permit any water user of the District to demand or receive service or water made available pur-

suant to this contract, unless charges at the rates and upon the terms and conditions provided for herein have been paid by such water user.

Levy of Taxes and Assessments—Fixing of Rates and Tolls

27. The District will cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of the District, to meet its obligations hereunder, to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract. The District may, either or both, require the payment of toll charges or levy assessments for such water or service. All assessments levied by the District to meet the obligations accruing under this contract shall, unless otherwise determined by the Board of Directors of the District, be upon an *ad valorem* basis.

Refusal of Water in Case of Default

28. No water or service shall be furnished to the District or by the District to or for the use of any lands or parties therein during any period in which the District may be in arrears in the advance payment of operation and maintenance or toll or rental charges or for more than twelve (12) months in the payment of construction charges accruing under this contract. No water or service shall be furnished to or by the District pursuant to this contract for lands or parties which are in arrears in the payment to the District of any assessments, rates, tolls, or rental charges of the District levied or established by the District and necessary [fol. 42] for the purpose of raising revenues to meet the payment by the District to the United States of the District's obligation under this contract. The provisions of this article are not exclusive and action taken pursuant hereto shall not prejudice or preclude the United States from exercising any other remedy to enforce collection of any amounts due hereunder.

PENALTY UPON DELINQUENCY IN PAYMENT

29. Upon every installment of money required to be paid by the District to the United States pursuant to this contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one-half (½) of one (1) percent per month of the amount of such delinquent installment from and after the date when the same becomes due until paid, and the District hereby agrees to pay said penalty: *Provided*, That no penalty shall be chargeable against the net amount of any adjustment made pursuant to Article 14 hereof.

DISTRICT TO KEEP BOOKS AND RECORDS AND REPORT CROP AND OTHER DATA

30. The District shall establish and maintain account and other books and records sufficient to enable it to furnish, in so far as the District is permitted to do so by the laws of the State of California, to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the United States as to information pertaining to (a) accounts and financial transactions of the District, in so far as such information pertains to this contract and operations thereunder, and (b) crops raised and agricultural and livestock products produced on the lands within the District, a report thereon to be furnished to the contracting officer annually on or before December 31.

[fol. 43] INSPECTION OF BOOKS AND RECORDS

31. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the Project account books and official records of the Bureau of Reclamation, in so far as the same pertain to the matters and things provided for in this contract, relating to the construction, acquisition, care, operation and maintenance of the distribution system, with the right at any time during office hours to make copies thereof, and the proper rep-

resentatives of the United States shall have similar rights in respect to the account books and records of the District.

CHANGES IN ORGANIZATION OF DISTRICT

32. While this contract is in effect no change will be made in the District either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

TITLE TO REMAIN IN THE UNITED STATES

33. Title to all of the Project works, including the distribution system constructed by the United States pursuant to this contract, shall be and remain in the name of the United States until otherwise provided for by the Congress, notwithstanding the transfer hereafter of any of such works to the District for operation and maintenance.

LAND NOT TO RECEIVE SERVICE FROM DISTRIBUTION SYSTEM OR WATER FURNISHED TO DISTRICT BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

34. (a) No water or service made available pursuant to this contract shall be furnished to any excess lands as de- [fol. 44] fined in Article 36 hereof unless the owners thereof shall have executed valid recordable contracts in form prescribed by the United States, agreeing to the provisions of Articles 34, 35, and 36 of this contract; agreeing to the appraisal provided for in Article 35 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the Project, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water or service made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer, and upon proof of fraudulent repre-

sentation as to the true consideration involved in such sale the United States may instruct the District by written notice to refuse to furnish any water or service subject to this contract to the land involved in such fraudulent sales and the District thereafter shall not furnish said water or service to such lands.

(b) If Project water furnished to the District pursuant to this contract reaches the underground strata of excess land owned by a large land owner who has not executed a recordable contract and the large land owner pumps such Project water from the underground, the District will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid *excess* land as an unavoidable result of the furnishing of Project water by the District to nonexcess lands or to excess lands with respect to which a recordable contract has been executed.

[fol. 45] VALUATION AND SALE OF EXCESS LANDS

35. (a) The value of the excess irrigable lands within the District, held in private ownership of large land owners as defined in the next succeeding article hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appointment of the third, the presiding justice of the Fourth District Court of Appeal of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such lands on account of the existing or prospective possibility of securing water or service from the distribution system.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately, in such appraisal,

(c) The cost of the first two appraisals and each subsequent appraisal requested by the United States shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large land owner may be appraised in like manner.

(e) Excess irrigable lands sold by large land owners within the District shall not carry the right to receive water or service made available pursuant to this contract for such land and the District agrees to refuse to furnish [fol. 46] such water or service to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the District.

(f) The District agrees to take all reasonable steps requested by the contracting officer to ascertain the occurrence and conditions of all sales of irrigable land of large land owners in the District and to inform the United States concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the District and like copies in such principal office of the Bureau of Reclamation as may be established hereafter in connection with the distribution system and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LANDS

36. (a) As used herein the term "excess land" means that part of the irrigable land within the District in excess of 160 acres held in the beneficial ownership of any single person, or in excess of 320 acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large land owner" means an owner of excess lands and the term "nonexcess land" means all irrigable land within the District which is not excess land as defined herein.

(b) Each large land owner as a further condition precedent to the right to receive water or service made available pursuant to this contract for any of his excess land shall:

(i) Before any water is furnished by the District [fol. 47] to his excess land, execute a valid recordable contract in form prescribed by the United States, agreeing to the provisions herein contained in Articles 34, 35, and 36 and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such *excess* land and within a period of ten (10) years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of ten years the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large land owner; and the District agrees that it will refuse to furnish said water or service to any large land owner other than for his nonexcess land until such owner meets the conditions precedent herein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large land owner to designate his irrigable lands under the Project which he desires to designate as nonexcess land, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the Bureau of Reclamation, his written designation and description of lands so selected to be nonexcess land and upon failure to do so the District shall make such designation and mail a notice thereof to such large land owner, and in the event the District fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer, who will mail a notice thereof to the District and the large land owner. The large land owner shall become bound by any such action on the part of the District or the contracting officer and the District will [fol. 48] furnish said water and service only to the land so designated to be nonexcess land. A large land

owner may, with the consent of the contracting officer, designate land other than that previously designated as nonexcess land: *Provided*, That an equal acreage of the land previously designated as nonexcess shall, upon such new designation, become excess land thereafter, subject to the provisions of Articles 34, 35, and 36 of this contract, and shall be described in an amendment of such recordable contract as may have been executed by the large land owner, in the same manner as if such land had been excess land at the time of the original designation.

AMENDMENT OF FEDERAL RECLAMATION LAWS

37. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, Articles 34, 35, and 36 of this contract will no longer be of any force or effect, and, in the event that the Congress amends the excess-land provisions or other provisions of the Federal reclamation laws the United States agrees, at the option of the District, to negotiate amendments of appropriate articles of this contract, all consistently with the provisions of such repeal or amendment.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

38. The expenditure of any money or the performance of any work by the United States herein provided for which may require appropriations of money by the Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of the Congress so to appropriate funds or the failure of an allotment of funds shall not relieve the District from any obligations then accrued under this contract and no liability shall accrue to the United States in case such [fol. 49] funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

39. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom,

but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

NOTICES

40. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given if deposited in the United States Post Office, on the part of the United States in a franked envelope addressed to the District at its office and on the part of the District in a postage prepaid envelope addressed to the Bureau of Reclamation, Department of the Interior, Sacramento, California, or such other address as from time to time may be designated by the contracting officer in a written notice to the District: *Provided*, however, That this article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT PROHIBITED: SUCCESSORS AND ASSIGNS OBLIGATED: DEFAULT

41. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the United States. Any waiver at any time by either party to this contract of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver [fol. 50] with respect to any subsequent default or matter. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revises Statutes of the United States as amended (41 U.S.C. 15).

ASSURANCE RELATING TO VALIDITY OF CONTRACT

42. Promptly after the execution and delivery of this contract the District shall file and prosecute to a final decree, including any appeal therefrom to the highest

court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and the proceedings of the District Board of Directors and of the District leading up to and including the making of this contract and the validity of the provisions thereof, as provided for by Section 23225 of the Water Code of California (St. 1943, Ch. 368, Div. 11, Part 6, Chap. 2, Art. 3, Sec. 23225, approved May 13, 1943); and this contract shall not be binding on the United States until said District organization, proceedings, and contract shall have been so confirmed by a court of competent jurisdiction or pending appellate action if *ground* for appeal be laid.

PERFORMANCE OF WORK WITH CONTRIBUTED FUNDS

43. (a) Pursuant to the Act of Congress of March 4, 1921 (41 Stat. 1367, 1404), the United States will perform with funds contributed by the District any construction or maintenance work on the distribution system not otherwise provided for by this contract, or any construction work covered by this contract but for which funds may not be available: *Provided*, That the undertaking of any such work and the plans therefor must be approved by the [fol. 51] United States. When the undertaking of such work is approved, funds therefor shall be advanced by the District as may be directed by the contracting officer and there shall be submitted to the United States a certified copy of the resolution of the Board of Directors of the District describing the work to be done and authorizing its performance with contributed funds.

(b) After completion of any work so undertaken the District will be furnished with a statement of the cost thereof, and any unexpended balance of the funds will be refunded to the District or applied as otherwise directed by the District, and the amount by which the cost of such work exceeds the amount of the funds advanced by the District therefor shall be paid by the District to the United States as the contracting officer may direct.

In Witness Whereof, the parties hereto have hereunto affixed their names the day and year hereinabove written.

The United States of America

By Richard L. Boke
Regional Director, Region 2,
Bureau of Reclamation,
U. S. Department of the Interior.

Approved as to Legal
Form and Sufficiency

John K. Bennett
Acting Regional Counsel

Ivanhoe Irrigation District

By A. S. McKellar
President of the Board
of Directors of Ivanhoe
Irrigation District

[fol. 52]

(Seal)

Attest:

Russell Davis
Secretary of the Board of
Directors of Ivanhoe Irrigation
District (District Seal)

[fol. 70] In Superior Court of Tulare County

Demurrer of Defendant Courtney McCracken to Complaint—Filed December 13, 1949

Now comes Courtney McCracken, a landowner, a water user and an assessment payer within the Ivanhoe Irrigation District, and as such, an interested party and a defendant in the above-entitled action, and appears in said action and demurs to plaintiff's complaint on file in said action upon the following grounds:

I

That said complaint does not state facts sufficient to constitute a cause of action.

II

That said complaint does not state facts ufficient to constitute a cause of action against this demurring defendant.

WHEREFORE, said defendant prays that said action be dismissed and that he recover of and from the plaintiff in said action his costs of suit incurred in said action.

Harry W. Horton, W. R. Bailey, By W. R. Bailey,
Attorneys for said defendant Courtney McCracken.

Points and Authorities

1. The proposed contract involves unconstitutional delegation of Legislative power of California to

(a) The Congress;

(b) The Secretary of the Interior;

[fol. 71] (c) The Secretary of the Interior and the District, acting jointly.

Constitution of California, Article IV, Section 1.
Division 11, Water Code of California.
16 Corpus Juris Secundum 343.

2. The land limitation provisions of the Reclamation Laws do not apply to Central Valley Project.

Reclamation Act of 1902 (32 Stat. 388) and Acts amendatory thereof and supplemental thereto.

Central Valley Project Reauthorization Acts (50 Stat. 850; 54 Stat. 1198, 1199).

3. The contract unconstitutionally deprives owners of excess land of property without due process of law.

Constitution of California, Article I, Section 13.
Constitution of U. S., Amendment 14.

Reclamation Act of 1902, and Acts amendatory thereof and supplemental thereto.
Chap. 2, Pt. 6, Div. 11, Water Code of California.

4. The "Irrigation District Federal Cooperation Law" violates the constitutional rule requiring uniform operation of General Rules and prohibiting Special Laws where General Laws may be applicable.

Constitution of California, Article I, Section 11; Article IV, Section 25, subd. 33.
Chap. 2, Pt. 6, Div. 11, Water Code.

5. The proposed contract is not authorized by Federal law.

Reclamation Project Act of 1939 (53 Stat. 1187), Section 9 (e).

[fol. 72] Respectfully submitted,

Harry W. Horton, W. R. Bailey, By W. R. Bailey,
Attorneys for said defendant Courtney McCracken.

Service admitted, December 13, 1949

[fol. 77] In Superior Court of Tulare County

Petition to Be Allowed to Appear as Amici Curiae—Filed October 13, 1950

To the Honorable Benjamin C. Jones:

Your petitioners, as friends of the court, respectfully represent that the above-entitled cause involves difficult and novel questions of law; that the United States is a party to the contract at issue in the above-entitled cause and thus has an interest in its outcome; that as attorneys in the employ of the Bureau of Reclamation of the United States Department of the Interior, your petitioners have devoted special attention to said questions; and request

that, in order to present the views of the United States, they be permitted, as friends of the court, to present oral argument and to file a brief in said cause on the questions therein involved.

Respectfully submitted,

Leland O. Graham, Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior.

Ralph M. Brody, Assistant Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior.

[fol. 85] In Superior Court of Tulare County

Notice of Motion to Strike Petition to Be Allowed to Appear as Amici Curiae—Filed October 18, 1950

To Leland O. Graham, Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior; Ralph M. Brody, Assistant Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior; E. I. Feemster and James Renwick McBride, Attorneys for Plaintiff; W. S. Bailey and Harry W. Horton, Attorneys for Defendant Courtney McCracken:

You Will Please Take Notice that on Monday, the 23rd day of October, 1950, at the hour of 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, at the Court Room in the Court House in the City of Visalia assigned for the hearings to be held in the above entitled cause before the Honorable Benjamin C. Jones, Judge assigned by the Judicial Counsel to hold said hearings, the undersigned, State of California, will move for an order striking from the files that certain instrument filed October 13, 1950, entitled "Petition to be Allowed to Appear as Amici Curiae" and signed by Leland O. Graham and Ralph M. Brody.

Said Motion will be made and based on all the pleadings, records, papers and files in said Court in said cause, and

upon the ground that the United States is not entitled to appear in said cause directly, or through any agents or attorneys, otherwise than by general appearance.

Dated this 16th day of October, 1950.

The State of California, Defendant, Fred N. Howser, [fol. 86] Attorney General, Arvin B. Shaw, Jr., Assistant Attorney General, Gilbert F. Nelson, Deputy Attorney General, Attorneys for the State of California.

POINTS AND AUTHORITIES.

1. This action is in rem.

Secs. 23225 and 22671 Water Code.

2. The caption of the Complaint and the allegations of paragraph II of the Complaint show that the defendants are all parties and persons having or claiming to have an interest in the approval and confirmation by this Court of the Contract, copy of which is attached to the Complaint and marked Exhibit "A".

3. The Petition, above mentioned, alleges "That the United States is a party to the contract at issue in the above entitled cause, and thus has an interest in its outcome".

4. The United States has required this action to be commenced. Sec. 1 of the Act of May 15, 1922 (42 Stat. 541; 43 U.S.C. 511).

Article 42 of Contract.

5. The United States is in the same position as the State of California with respect to this proceeding.

People v. *Linda Vista Irr. Dist.*, 128 Cal. 477;
People v. *Perris Irr. Dist.*, 132 Cal. 289.

[fol. 87] 6. A party to an action cannot appear otherwise than by general appearance.

Sec. 422, Code of Civil Procedure of State of California.

7. A party to an action, therefore, cannot appear, either directly or through agents or attorneys, as amicus curiae.

[fol. 88] In Superior Court of Tulare County

Opposition of State of California to Petition of Leland O. Graham and Ralph M. Brody to Be Allowed to Appear as Amici Curiae—Filed October 18, 1950

To the Honorable Superior Court Above Entitled:

The State of California, a party defendant in the above entitled proceeding, opposes the Petition herein filed by Leland O. Graham, Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior, and Ralph M. Brody, Assistant Regional Counsel of said Bureau, to be allowed to appear as amici curiae in the above entitled cause, upon the following grounds:

1. That this proceeding under Sections 23225 and 22671 of the Water Code of California is a proceeding in rem. That the caption of the Complaint and Summons in this action is "The Ivanhoe Irrigation District, an irrigation district, Plaintiff —vs— All Parties and Persons Having or Claiming to Have any Interest in the Approval and Confirmation of the Proceedings for the Organization of the Ivanhoe Irrigation District, and all Parties and Persons in any way Interested in the Certain Contract Dated September 23, 1949, Entitled", etc; and it is alleged in paragraph II of said Complaint that "the defendants herein are all parties and persons having, or claiming to have any interest in the judicial examination, approval and confirmation of:— * * *

(2) All the proceedings leading up to and including the execution and delivery of the above mentioned contract; and

(3) The validity of the contract and of each and every term and provision thereof; and

[fol. 89] (4) The right and authority of the respective persons signing the same and the parties thereto to so execute the contract; * * *"

2. That the United States, whom said persons represent as attorneys, is a party defendant in said cause and cannot be permitted to appear directly, or through its agents

as amici curiae. That as stated in said Petition, the United States is a party to the Contract at issue in the above entitled cause, and thus has an interest in its outcome. Further, that the United States, by the Act of May 15, 1922 (42 Stat. 541, 43 U. S. C. 411) has required that this action be filed, and likewise by Article 42 of the Contract, which is attached to the Complaint herein and marked Exhibit "A", has required that this action be filed and prosecuted to a final decree.

3. That under Section 422, Code of Civil Procedure of California, the only pleadings allowed on the part of a defendant are:

"1. The demurrer to the complaint;

2. The answer;

3. The cross-complaint;

4. The demurrer to the answer to the cross complaint. * * * *".

Wherefore, the State of California opposes said Petition and respectfully prays that an order be made denying said Petition, and that it be ordered, adjudged and decreed that the United States is not entitled to appear in this proceeding otherwise than by general appearance; and for all other proper relief.

Dated this 16th day of October, 1950.

[fol. 90] The State of California, Defendant, Fred N. Howser, Attorney General, Arvin B. Shaw, Jr., Assistant Attorney General, Gilbert F. Nelson, Deputy Attorney General, Attorneys for the State of California.

[fol. 100] In Superior Court of Tulare County

Answer of Defendants, the People of the State of California.

Come now defendants, the People of the State of California, and, without waiving their demurrer to the complaint herein filed, answer said complaint and for a first defense admit, deny and allege as follows:

First Defense

I.

Allege that the State of California is one of the United States of America; that these answering defendants appear in the sovereign, governmental, and proprietary capacities of said State, in its own interest and for the protection of its own rights; also as parens patriae, in the interest of and for the protection of all its citizens, residents, landowners and water users, and its agency, the plaintiff district, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust, hereinafter described, which trust relates to the use of water in the Central Valley Project hereinafter mentioned; also as absolute owner of the corpus of the water to be used in and by said Central Valley Project and as owner of the right of reversion of any rights of use of such water which may be forfeited or otherwise terminated for non-use or otherwise; and as owner, as trustee for the use and benefit of the Central Valley Project, of the right to apply to beneficial use for irrigation in said Central Valley Project certain waters of streams tributary to the Sacramento and San Joaquin Rivers, which waters will be commingled with other waters to be used in said project.

[fol. 101]

II.

Allege that Central Valley Project is a multiple-purpose project designed and planned for the general purposes of irrigation of arid lands in the Great Central Valley of California, improvement of navigation, river regulation,

flood control, incidental development of hydroelectric power, repulsion of salt water at the mouth of the Sacramento River, and related purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin Rivers, and their tributaries; that said project contemplates the use in said valley, for irrigation, municipal, domestic, power and other purposes, of the waters of the Sacramento and San Joaquin Rivers and their tributaries; that said waters arise, flow and discharge into the Pacific Ocean wholly within the State of California; that there are no public lands of the United States in said valley; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set out and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins are hereby referred to and incorporated by reference in this Answer.

III.

Allege that by act of its Legislature adopted August 5, 1933, and effective January 13, 1934 (California Statutes 1933, p. 1042) the State of California authorized the construction of the Central Valley Project and created a state [fol. 102] agency designated "Water Project Authority of the State of California," and authorized said Authority to construct, maintain and operate said project and to use therefor the proceeds of sale of certain state bonds authorized by said Act; that following the adoption of said Act it became and was impracticable for the state to sell said bonds and construct the project; that by the Acts of Congress designated the Emergency Relief Appropriation Act of 1935 and the Rivers and Harbors Act of 1935, by executive orders signed by the President September 10, 1935, and November 16, 1935, a finding of feasibility signed by the Secretary of the Interior and approved by the President December 2nd, 1935, and the Acts of Congress desig-

nated the Rivers and Harbors Act of 1937, and the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, Public Law No. 356, 81st Congress, first session, and the Act of Congress approved September 26, 1950, Public Law 839, 81st Congress, second session, the Secretary of the Interior was authorized to construct said Central Valley Project and has undertaken and entered upon the construction of said project; that certain features of said project have been constructed and others are approaching completion of construction.

IV.

Allege that the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plant, and appurtenances thereof;

[fol. 103] (2) Contra Costa Conduit, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(3) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said Delta Cross-Channel to the Mendota Pool in the San Joaquin River;

(4) Friant Dam and reservoir on the Upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant reservoir southerly to a point on Kern River near Bakersfield.

V.

Allege that by the contract dated July 27, 1939, between the United States and the San Joaquin and Kings River

Canal and Irrigation Company, Incorporated, mentioned in Article 16 (d) of the contract, which is sought to be validated in plaintiff's complaint herein, and by other comparable contracts, the United States acquired estoppels against the exercise by said company and others of riparian rights claimed by them to use for irrigation and otherwise waters of the San Joaquin River and its tributaries by diversion in the vicinity of and below Mendota Pool, and the United States in said contracts agreed to deliver to said riparian claimants, in exchange, certain waters of the Sacramento River and its tributaries, to be imported from the latter to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota [fol. 104] Canal; that the United States acquired said estoppels in order that it might be able to store in Friant Reservoir, free of the claims of said parties, waters of the San Joaquin River arising above said reservoir and divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir through Friant-Kern Canal for irrigation of the lands in plaintiff District.

VI.

Allege that the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, heretofore filed with the Division of Water Resources of the Department of Public Works of California certain applications for the appropriation of unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said Statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley

Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for [fol. 105] irrigation and domestic use, saline and flood control, and navigation purposes and Application No. 9364 to appropriate water of the Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10 S. R. 21 E. M.D.B. & M. and at Friant Dam for irrigation, domestic and flood control purposes; that a true copy of said assignment dated September 3, 1938, is hereto attached, marked "Exhibit A", and a true copy of said assignment dated September 30, 1939, is hereto attached, marked "Exhibit B", and said copies are by reference made a part hereof,

VII.

Allege that the State of California has not assigned to the United States, nor to anyone, any of the applications to appropriate water on the tributaries of the Sacramento and San Joaquin Rivers, hereinabove mentioned.

VIII.

Allege that by virtue of the terms of said assignments the State of California has become and is the trustor of an express trust; the United States has become and is the Trustee of that trust; the landowners to be served

[fol. 106] water from the works of the Central Valley Project, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 16 (d) of the contract herein sought to be validated, and similar or comparable contracts, and under the assignments, Exhibits "A" and "B" hereto, are held by the United States as such trustee under said express trust and as a part of a trust fund or res for the use and benefit of the Central Valley Project and the landowners to be served water from the works of said project, and in particular the landowners of plaintiff district; that the State of California, as trustor and as parens patriae, is entitled to be heard, among other things, as to all matters relating to the administration and execution of said trust by said trustee and entitled to require that the trustee administer said trust according to its true intent and meaning.

IX.

Allege that said Central Valley Project will provide a stabilized source of supplemental water supply for irrigation and other purposes for many hundreds of thousands of acres of land now under cultivation and irrigation in the Great Central Valley of California; that the construction, operation and maintenance of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 57 counties of California, embracing more than half of the cultivated agricultural lands of the State; that twenty or more contracts between the United States of America and irrigation and water districts organized under California law, generally com-[fol. 107] parable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that questions of law and fact identical with or similar to those involved in the case at bar will be presented in said future validation actions; that the original cost estimate of the Bureau of Reclamation, made in 1936, for the construction of said Central Valley Project was $170,000,000; that the

last official estimate disclosed by the Bureau of Reclamation for the cost of construction of said Project, made in January, 1950, was $581,886,000; that said last estimate is believed to include the cost of the American River Development which was added to said project by Act of Congress adopted October 14, 1949, but does not include the cost of the Sacramento Valley Canals added to said project by Act of Congress adopted September 26, 1950; that the estimate of cost of said Sacramento Valley canals made by the Bureau of Reclamation in May, 1949, was from $40,000,000 to $65,000,000; that said Secretary and said Bureau of Reclamation seek and have, by official report to Congress, recommended the expansion of said Central Valley Project to include units and features in addition to those now authorized for construction by the Congress, which said Bureau estimates will cost in excess of $3,000,000,000; that it is the policy of said Secretary and said Bureau and they intend that the use of water throughout both said presently authorized project and said expanded project shall be governed by contracts made under Section 9 (e) of the Act of Congress designated the Reclamation Project Act of 1939, which contracts shall be generally similar or comparable to the contract herein sought to be validated; that said expanded Central Valley Project is [fol. 108] generally described and outlined in the report of said Bureau entitled "Central Valley Basin", being Senate Document 113, Eighty-first Congress, first session, to which reference is hereby made; that the construction, operation and maintenance of said expanded Central Valley Project would profoundly affect the economy and welfare of the owners of several million acres of land, now irrigated or unirrigated, in the Great Central Valley of California, and of several millions of the citizens, residents, landowners and water-users of the State.

X.

Allege that the United States is one of the parties defendant described in the caption of plaintiff's complaint and in paragraph II of said complaint, and is a party to this action.

XI.

Answering the allegations of paragraph numbered II of plaintiff's complaint, these answering defendants deny that the purported contract attached to plaintiff's complaint and marked "Exhibit A" is a valid and binding, or valid or binding contract; deny further that the persons executing said contract on behalf of the parties thereto, or any of them, acted in the official capacity of them, or any of them, or within the scope of the authority of them, or any of them; allege on the contrary that said persons, in purporting to execute said contract, acted beyond the respective authority of them, and each of them.

XII.

Answering the allegations of paragraph numbered III of Plaintiff's complaint, these answering defendants deny that plaintiff district has ever accepted said contract; deny that the resolution alleged to have been passed and adopted [fol. 109] by the Board of Directors of plaintiff district was regularly or lawfully or validly adopted.

XIII.

Answering the allegations of paragraph numbered IV of plaintiff's complaint, these answering defendants deny that said contract was duly and regularly, or duly, or regularly, submitted to Districts Securities Commission of the State of California; admit that said Commission on July 9, 1949, made the report and order, of which copy is set forth in "Exhibit C" attached to plaintiff's complaint (as corrected and amended by the letter of said Commission dated July 20, 1949, attached to said "Exhibit C"); deny that in making said report and order said Commission gave, or intended to give, its unqualified approval to the contract herein sought to be validated, or to the terms and provisions, or terms, of provisions, of said contract, and allege that said approval was and is conditional in several particulars, including among other things the condition that the legality and validity of said contract be determined by this Court.

XIV.

Answering the allegations of paragraph numbered V of plaintiff's complaint, these answering defendants deny that pursuant to the resolution of May 24, 1949, referred to in said paragraph or in pursuance of any further resolution of said Board of Directors adopted July 19, 1949, or at all a special election was regularly called to be held in said district; deny that said special election was regularly called; deny that said special election was duly called, noticed and held, or duly called, or duly noticed, or duly held; deny that it was legally and fairly conducted, or [fol. 110] legally or fairly conducted; deny that it was called, noticed, held and conducted; or called, noticed, held or conducted in the manner provided by law; deny that the execution of said contract was duly authorized, or authorized at all, by the electors of plaintiff district as provided by law, or at all; deny that in pursuance of said resolution of May 24th, 1949, or at all, or in pursuance of a resolution of said Board of Directors adopted August 29, 1949, or at all, said contract was regularly executed, or executed at all, by the parties thereto, or by either of them.

XV.

Answering the allegations of paragraph numbered IX of plaintiff's complaint, these answering defendants deny that the contract herein sought to be validated is made pursuant to and in compliance with, or pursuant to, or in compliance with, the laws, or any law, of the State of California and of the United States of America, or of either of them.

XVI.

Answering the allegations of paragraph numbered X of plaintiff's complaint, these answering defendants admit that in the acts and proceedings of the Board of Directors of plaintiff district mentioned in said paragraph, said acts and proceedings were done or performed by said Board at meetings regularly called and held at the usual place for the holding of such meetings, and that at each such meeting a quorum of said Board was present and partici-

pating, and voted in favor of the action taken, and in all things connected with the making, execution and delivery of said contract plaintiff district and its officers, directors [fol. 111] and agents acted in good faith and in pursuance of that which was in each instance by them deemed to be, and is still deemed to be, to and for the best interests and advantage of the district and the inhabitants thereof and the landowners, assessment payers, water users and all other persons interested therein; deny generally and specifically each and every material allegation contained in said paragraph X which is not in this paragraph expressly admitted.

Second Defense.

As and for a Second Defense to Plaintiff's Complaint, These Answering Defendants Admit, Deny and Allege as Follows:

I.

That paragraphs numbered I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV and XVI of the first defense herein are hereby referred to and made a part of the second defense with the same force and effect as if set out herein word for word.

II.

That the contract, a copy of which is attached to the complaint herein and marked "Exhibit A", is illegal, invalid, unauthorized and void; that among the particulars in which the said contract is illegal, invalid, unauthorized and void are the matters hereinafter set out in this second defense.

III.

That Sections 23225, 22672 and 22673 of the Water Code of California purporting to authorize this action, are unconstitutional and void in this: that the period for publication of summons and for appearance of interested parties in such an action is unreasonably short, in view of the [fol. 112] character and scope of the action as an in rem

action, and the landowners and water users of said district and other interested parties are thereby deprived of property without due process of law and without compensation.

IV.

That among other things, said contract is, in each of the following particulars, unauthorized by any law of the United States:

(a) That said contract purports to be a contract for the sale of water by the United States to plaintiff district; that such a contract is not authorized by any law of the United States;

(b) That said contract is made upon such terms that the cost of construction of works connected with water supply for said district will not be repaid to the United States by said district, or at all, within 40 years; that such a contract is not authorized by any law of the United States;

(c) That said contract, in and by Articles 34, 35 and 36, purports to impose certain land limitations upon said district and the owners of land in said district; that the imposition of such land limitations is not authorized by the Acts of the Congress of the United States by which the construction, operation, and maintenance of the Central Valley Project, of which said district is a part, were authorized, nor by any law of the United States;

(d) That said contract purports to terminate delivery of water by the United States to plaintiff district at the end of 40 years; that such a contract is not authorized by any law of the United States.

V.

That said contract is not authorized by and violates the [fol. 113] law of California in the following particulars, among others:

(a) That from time to time plaintiff district will possess surplus water not then necessary for use within the district, and said district will be entitled, under Section 22559

of the Water Code of California, to dispose of such surplus water for use thereof outside plaintiff District; that Article 12(b) of said contract purports to prohibit such disposal without the contracting officers' written consent; that such provision is not authorized by any law of California;

(b) That certain waste, seepage and return flow water derived from water delivered to the district under said contract will escape and be discharged beyond the district's boundaries; that Article 15(c) of said contract purports to reserve to the United States rights to such water; that said provision is not authorized by any law of California;

(c) That in the ordinary course of business, plaintiff district will be required to levy assessments upon the lands therein; that Article 26 of said contract prohibits the delivery of water made available pursuant to said contract to any water user of the district unless such assessments are paid, even though such assessments be judicially determined to be irregular or void; that such provision is not authorized by any law of California;

(d) That Article 27 of said contract permits the levy of assessments by the plaintiff district upon an ad valorem basis; that such levy upon lands denied delivery of water made available pursuant to the contract, under Articles 34, 35 and 36 of said contract, would constitute a deprivation of property without due process of law, and without compensation; that said provision is not authorized by any [fol. 114] law of California;

(e) That Article 32 of said contract purports to prohibit any change in the district by partial or total consolidation or merger with another district, without the written consent of the contracting officer; that said provision is not authorized by any law of California;

(f) That said contract contains no statement of the maximum amount of money to be payable to the United States by plaintiff district for construction purposes and cost of water supply and acquisition of property, or any thereof; that it is and was impossible for plaintiff district to provide such a statement, as required by Section 23223 of the Water Code of California, in the notice of the elec-

tion at which the electors of said district purported to authorize the execution of said contract, which election is alleged in paragraph numbered V of said complaint to have been held in said district; that such a statement was not contained in said notice of election; that such a notice of election is not authorized by any law of California.

VI.

That Chapter 2, Part 6, Division 11, of the Water Code of California, designated the "Irrigation District Federal Cooperation Law", does not authorize the execution of said contract by plaintiff district, and if it were so construed as to authorize the execution of such contract, it would be unconstitutional and void in this:

(a) That said law does not have a uniform operation; and

(b) That said law would be a local or special law in a case where a general law can be made applicable.

VII.

That Section 23195 of the Water Code of California, [fol. 115] purporting to authorize irrigation districts to contract with the United States, is unconstitutional and void if interpreted and applied so as to permit such contracts to be made under the terms of Acts of Congress adopted after the year 1917; that the contract herein sought to be validated is not authorized and could not be made under or in accordance with the terms of the Federal Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto adopted by the Congress prior to the adoption in 1917 by the California legislature of said Irrigation District Federal Cooperation Law.

VIII.

That said contract would deprive landowners of said district of property without due process of law and without compensation, in the following particulars, among others:

(a) By the land limitation provisions of Articles 34, 35 and 36;

(b) By application of the provisions of Section 5 of the Reclamation Act of June 17, 1902, requiring any such landowner to be an actual bona fide resident upon his land, or occupant thereof residing in the neighborhood of said land;

(c) By application of the provisions of Section 3 of the Act of Congress, adopted August 9, 1912, requiring excess holdings prohibited by said contract to be forfeited to the United States;

(d) By application of the provisions of Section 10 of said Act of June 17, 1902;

(e) By application of the provisions of Section 15 of the Act of Congress adopted August 4, 1939, and of several [fol. 116] intervening acts authorizing the Secretary of the Interior to make rules and regulations respecting the carrying out of the contract, such rules and regulations not being confined to rules and regulations adopted and existing at the time of the execution of said contract;

(f) That the Secretary of the Interior unlawfully contends that under the provisions of the Federal Reclamation Laws he has the authority to make rules and regulations:

(1) requiring cropping practices approved by him;

(2) regulating and limiting the size of farm units to not less than 10 nor more than 160 acres;

(3) requiring residence of the landowner upon his land, or occupancy thereof by him;

(4) limiting delivery of water to farm units smaller than 160 acres;

(5) determining the irrigability of land;

(6) determining the rate of improvement and cultivation of land;

that such contentions are invalid and unauthorized by any federal law, or any law of California.

IX.

That said Irrigation District Federal Cooperation Law and said contract are unconstitutional and void in the following particulars, among others:

(a) That they purport unconstitutionally to delegate to Congress the power to adopt future legislation governing and prescribing the terms under which such contracts can [fol. 117] be made by California irrigation districts;

(b) That they purport, and in particular Article 32 of said contract purports to delegate to the Secretary of the Interior or the contracting officer the power to veto changes in said District and in the boundaries thereof;

(c) That they purport to delegate to the Secretary of the Interior or the contracting officer the power to make future rules and regulations, governing the matters set forth in paragraph VIII of this second defense;

(d) That they purport to delegate to the Secretary of the Interior and the district power to enlarge or modify the legal authority of the district by the terms of the contract;

(e) That they purport to delegate to the Secretary of Interior and the district the ascertainment of benefits in accordance with which assessments may be made by the District.

X.

The foregoing specifications as to matters wherein said contract is invalid are not intended to be all inclusive, and these answering defendants do not waiver their rights to raise, argue and have determined any and all questions which may exist as to the invalidity of said contract.

Third Defense

As and for a Third Separate and Further Defense to Plaintiff's Complaint, These Answering Defendants Admit, Deny and Allege:

I.

That paragraphs I, II, III, IV, V, VI, VII, VIII and IX [fol. 118] of the first defense herein are hereby referred to and made a part of this third defense, with the same force and effect as if set out herein word for word.

II.

That said complaint does not, nor does any part, section or paragraph thereof, state facts sufficient to constitute a cause of action.

Wherefore, these answering defendants pray that judgment be entered that plaintiff take nothing by its complaint; that a declaration be made of the rights and duties among themselves of the State of California, the United States, plaintiff district and the landowners thereof in respect of said contract; and for all other proper relief.

Fred N. Howser, Attorney General, Arvin B. Shaw, Jr., Assistant Attorney General, Gilbert F. Nelson, Deputy Attorney General, Attorneys for answering defendants.

Verified by Gilbert F. Nelson, November 7, 1950

[fol. 130] In Superior Court of Tulare County

No. 39627

Answer of Defendant Courtney McCracken —Filed November 14, 1950

Comes Now Courtney McCracken, a party in interest, including ownership of land and water and other rights within the Ivanhoe Irrigation District, and without waiving his demurrer to the complaint herefofore filed, makes and files this his answer to the complaint herein of the Ivanhoe Irrigation District and prays this Court for a declaration of rights and duties, and in connection therewith for his first defense admits, denies and alleges as follows:

First Defense:

I.

Admits that in 1948 certain proceedings were had and taken for the formation of an irrigation district to be known as Ivanhoe Irrigation District and that the area involved in said proceedings includes approximately 11,117 acres of land in Tulare County, California. Admits that the Board of Directors of the Ivanhoe Irrigation District and representatives thereof did carry on negotiations with the Bureau of Reclamation of the United States Department of Interior and representatives of said Bureau and Department to procure a dependable supplemental supply of water for the lands within said district and that negotiations were also carried on for the design and construction of a distribution system within said district for the receiving of said supplemental supply of water from a central point on what is referred to as the Friant-Kern Canal [fol. 131] (hereinafter more particularly described and referred to) and distributing said supplemental supply to units of not exceeding 160 acres each to all of the area and acreage within said district deemed irrigable. Admits that several contracts and forms and terms for contracts were urged by said Bureau and Department and that finally the Board of Directors of said Ivanhoe District did accept on behalf of said district the contract and form of contract set forth as Exhibit "A" attached to plaintiff's complaint. Alleges that said contract was so accepted by said district and its representatives as the best and only contract that said Bureau and Department would make. That said contract and its terms were accepted only as the only means of getting a supplemental water supply and because of the belief of a need for water within certain areas of said district. That certain terms and conditions of said contract (hereinafter more particularly referred to) were not sought or requested by said district and were insisted upon by said Bureau and Department and their representatives as a condition of obtaining any water.

Admits that said contract was by action of said Board of Directors submitted to the Districts Securities Commission of the State of California and that said Commission did issue its order in the words and figures as set forth

in Exhibit "C" attached to plaintiff's complaint (as corrected and amended by its letter of July 20, 19[illegible] attached to said Exhibit "C"). Denies, however, that in so doing said Commission gave or intended to give its unqualified approval to said contract and/or its terms and provisions and alleges that said approval was and is conditional in several particulars including, among others, the legality of certain Bureau and Department-required provisions (here-[fol. 132] inafter particularly referred to) being determined by the Courts.

Admits that thereafter said district Board of Directors did cause a proposition in connection with said matter to be submitted to the voters within said district and that the vote counted by said Board was 251 for and 33 against the proposal submitted at said election. Admits that thereafter the district officers and the Regional Director of Region 2 of said Bureau and Department did sign said contract Exhibit "C" attached to said complaint and that thereafter this proceeding was instituted by plaintiff.

Admits that there are approximately 11,117 acres of land within the boundaries of said district and alleges that most all of said acreage is subject to irrigation and cultivation and has been reclaimed and is devoted to farms and crops and is fertile.

Admits that the rainfall in the vicinity of said district is not adequate for all irrigation purposes in said district and that additional water for irrigation and domestic purposes is supplied by pumping from an established and defined underground body of water, and that this pumping is done by the individual landowners from wells on their respective lands within said district. Admits that in years of limited rainfall pumping from said underground body of water causes said underground water supply to lower but alleges that said underground body of water is quickly replenished in periods of normal rainfall in the vicinity in question and that only a limited and periodic supplemental supply of water may be needed within said district and that said distribution system is and will be needed only in limited areas and substantial areas only periodically, if at all.

[fol. 133]

II.

That other than above or hereinafter admitted or alleged each and all of the allegations of paragraphs I through X inclusive of the complaint are denied.

III.

That the defendant Courtney McCracken is now and was at all times herein mentioned and for several years prior thereto has been the owner of 309 acres of land within said district. That this defendant has reclaimed and put into a high state of production substantially all of said acreage. That said defendant's land is supplied with irrigation water by pumping from wells and through pipe lines in a system installed by defendant and from a supply of water owned by defendant served to defendant's land from the canal system of what is known as the Wutchumna Water Co. by virtue of stock ownership of the defendant in said company and from return and seepage flow water from higher lands reaching defendant's land and to which flow defendant is entitled and of which he is the owner by use and right.

IV.

That said defendant's land in said district is described as follows:

The Northwest Quarter of Section 30, Township 17 South, Range 26 East, M.D.B. & M. comprising 152 acres, more or less; and

The Northwest Quarter of Section 25, Township 17, South, Range 25 East, M.D.B. & M. comprising 157 acres, more or less.

That 125 acres of said land is improved to grape vineyard [fol. 134] and young orange orchard; 160 acres of said land is devoted to annual crops, including the raising of vegetables, truck crops and grains; about 24 acres of said land is hillside pasture land, which said land (except said hillside pasture) is well leveled and readily irrigated and is fertile and capable of producing bountiful crops; that

said land has been reclaimed and developed and is being farmed as a unit, and its highest and best use is that of being farmed as a unit.

V.

That defendant protested in writing filed with the Board of Supervisors of said Tulare County against the inclusion of defendant's lands or any part thereof within the district and protested same, and his said lands and all thereof were included over his written protest and objection. That since the organization of the district this defendant has suggested to the Board of Directors of said district that his land be excluded from said district, but has been advised by the members of said Board and believes that they would decline to exclude his land from said district; that it would be futile and useless for defendant to petition for exclusion of his land from said district.

VI.

That defendant has never consented to said contract or the terms thereof and in particular the provisions and effect thereof herein referred to and defendant protested but could not vote against the approval of said contract by the district for the reason that he is not and was not a resident or voter in said district.

VII.

That defendant is the owner of additional lands in other [fol. 135] areas within the Central Valley Project in California, said holdings being as follows:

The North Half of Northwest Quarter of Southwest Quarter and South Half of the Southeast Quarter of Southwest Quarter, and the East Half of Northwest Quarter of Northwest Quarter of Section 33, Township 23 South, Range 26 East, M.D.B. & M. comprising 60 acres, more or less, situate in Delano-Earlimart Irrigation District; and

That portion of Lot 53 of Mountain View Citrus Tract #1 described as: W por bet RR com 251.8 ft E of NE

cor of Sec. 30, E 244.5 ft to W line of RR, S 3° 7' W 140.2 ft; S 5° 13' W 607.5 ft alg R/w to CL line of Co. Rd; Ely N 30° 07' W, 264.3 ft N 3° 42' W 516.24 ft to Beg., comprising 3 acres, more or less, situate in Orange Cove Irrigation District.

VIII.

That defendant has been advised by the Bureau of Reclamation of the United States Department of the Interior that in order to obtain any water from said district under said contract he will be obliged to sell, or authorize the Secretary of the Interior by recordable contract to sell his land in said project exceeding 160 acres, and to designate his land not in excess of 160 acres upon which he desires to obtain water, and without taking such action he will not be delivered any water by the district; that defendant does not desire to sell or authorize anyone to sell his land in excess of 160 acres, nor to designate any 160 acres upon which water shall be delivered as non-excess [fol. 136] land.

IX.

That this defendant is an unmarried man; that he resides near the City of Woodlake, County of Tulare, State of California.

X.

That the contract set forth as Exhibit "A" attached to the complaint and the property of defendant above described and referred to, and the rights and duties of defendant with respect thereto, are directly involved in the determination of the matters and issues hereinbefore set forth and this defendant asks for a declaration of his legal rights and duties in relation thereto and in relation to the other parties to said contract and to this proceeding.

Second Defense:

As and for a Second, Further and Separate Defense to Plaintiff's Complaint, Defendant Admits, Denies and Alleges:

I.

That paragraphs numbered I, II, III, IV, V, VI, VII, VIII, IX and X, inclusive, of his first defense herein are hereby referred to and made a part of this second defense with the same force and effect as if set out herein word for word.

II.

That the contract, a copy of which is attached to the complaint herein and marked "Exhibit A", is illegal, invalid, unauthorized and void; that among the particulars in which the said contract is illegal, invalid, unauthorized and void are the matters hereinafter set out in this second defense.

[fol. 137]

III.

That Sections 23225, 22672 and 22673 of the Water Code of California purporting to authorize this action, are unconsitutional (sic) and void in this: that the period for publication of summons and for appearance of interested parties in such an action is unreasonably short, in view of the character and scope of the action as an in rem action, and the landowners and water users of said district and other interested parties are thereby deprived of property without due process of law and without compensation.

IV.

That among other things, said contract is, in each of the following particulars, unauthorized by any law of the United States:

(a) That said contract purports to be a contract for the sale of water by the United States to plaintiff district; that such a contract is not authorized by any law of the United States;

(b) That said contract is made upon such terms that the cost of construction of works connected with water supply for said district will not be repaid to the United States by said district, or at all, within 40 years; that such a contract is not authorized by any law of the United States;

(c) That said contract, in and by Articles 34, 35 and 36, purports to impose certain land limitations upon said district and the owners of land in said district; that the imposition of such land limitations is not authorized by Acts of the Congress of the United States by which the construction, operation, and maintenance of the Central Valley Project, of which said district is a part, were authorized, [fol. 138] nor by any law of the United States;

(d) That said contract purports to terminate delivery of water by the United States to plaintiff district at the end of 40 years; that such a contract is not authorized by any law of the United States.

V.

That said contract is not authorized by and violates the law of California in the following particulars, among others:

(a) That from time to time plaintiff district will possess surplus water not then necessary for use within the district, and said district will be entitled, under Section 22559 of the Water Code of California, to dispose of such surplus water for use thereof outside plaintiff district; that Article 12(b) of said contract purports to prohibit such disposal without the contracting officers' written consent; that such provision is not authorized by any law of California;

(b) That certain waste, seepage and return flow water derived from water delivered to the district under said contract will escape and be discharged beyond the district's boundaries; that Article 15(c) of said contract pruports (sic) to reserve to the United States rights to such water; that said provision is not authorized by any law of California;

(c) That in the ordinary course of business, plaintiff district will be required to levy assessments upon the lands therein; that Article 26 of said contract prohibits the delivery of water made available pursuant to said contract to any water user of the district unless such assessments are paid, even though such assessments be judicially determined to be irregular or void; that such provision is not [fol. 139] authorized by any law of California;

(d) That Article 27 of said contract permits the levy of assessments by the plaintiff district upon an ad valorem basis; that such levy upon lands denied delivery of water made available pursuant to the contract, under Articles 34, 35 and 36 of said contract, would consitute (sic) a deprivation of property without due process of law and without compensation; that said provision is not authorized by any law of California;

(e) That Article 32 of said contract purports to prohibit any change in the district by partial or total consolidation or merger with another district, without the written consent of the contracting officer; that said provision is not authorized by any law of California;

(f) That said contract contains no statement of the maximum amount of money to be payable to the United States by plaintiff district for construction purposes and cost of water supply and acquisition of property, or any thereof; that it is and was impossible for plaintiff district to provide such a statement, as required by Section 23223 of the Water Code of California, in the notice of the election at which the electors of said district purported to authorize the execution of said contract, which election is alleged in paragraph numbered V of said complaint to have been held in said district; that such a statement was not contained in said notice of election; that such a notice of election is not authorized by any law of California.

VI.

That Chapter 2, Part 6, Division II, of the Water Code of California, designated the "Irrigation District Federal Cooperation Law", does not authorize the execution of said [fol. 140] contract by plaintiff district, and if it were so construed as to authorize the execution of such contract, it would be unconstitutional and void in this:

(a) That said law does not have a uniform operation; and

(b) That said law would be a local or special law in a case where a general law can be made applicable.

VII.

That Section 23195 of the Water Code of California, purporting to authorize irrigation districts to contract with the United States, is unconstitutional and void if interpreted and applied so as to permit such contracts to be made under the terms of Acts of Congress adopted after the year 1917; that the contract herein sought to be validated is not authorized and could not be made under or in accordance with the terms of the Federal Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto adopted by the Congress prior to the adoption in 1917 by the California Legislature of said Irrigation District Federal Cooperation Law.

VIII.

That said contract would deprive landowners of said district of property without due process of law and without compensation, in the following particulars, among others:

(a) By the land limitation provisions of Articles 34, 35 and 36;

(b) By application of the provisions of Section 5 of the Reclamation Act of June 17, 1902, requiring any such landowner to be an actual bona fide resident upon his land, or occupant thereof residing in the neighborhood of said land;

[fol. 141] (c) By application of the provisions of Section 3 of the Act of Congress, adopted August 9, 1912, requiring excess holdings prohibited by said contract to be forfeited to the United States;

(d) By application of the provisions of Section 10 of said Act of June 17, 1902;

(e) By application of the provisions of Section 15 of the Act of Congress adopted August 4, 1939, and of several intervening acts authorizing the Secretary of the Interior to make rules and regulations respecting the carrying out of the contract, such rules and regulations

not being confined to rules and regulations adopted and existing at the time of the execution of said contract;

(f) That the Secretary of the Interior unlawfully contends that under the provisions of the Federal Reclamation Laws he has the authority to make rules and regulations:

(1) requiring cropping practices approved by him;

(2) regulating and limiting the size of farm units to not less than 10 nor more than 160 acres;

(3) requiring residence of the landowner upon his land, or occupancy thereof by him;

(4) limiting delivery of water to farm units smaller than 160 acres;

(5) determining the irrigability of land;

(6) determining the rate of improvement and cultivation of land;

that such contentions are invalid and unauthorized by any federal law, or any law of California.

[fol. 142] IX.

That said Irrigation District Federal Cooperation Law and said contract are unconstitutional and void in the following particulars, among others:-

(a) That they purport unconstitutionally to delegate to Congress the power to adopt future legislation governing and prescribing the terms under which such contracts can be made by California irrigation districts;

(b) That they purport, and in particular Article 32 of said contract purports to delegate to the Secretary of the Interior or the contracting officer the power to veto changes in said district and in the boundaries thereof;

(c) That they purport to delegate to the Secretary of the Interior or the contracting officer the power to make future rules and regulations, governing the matters set forth in paragraph VIII of this second defense;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. N. PHILPOT
Notary Public in and for said
County and State.

(Notary Seal)

My commission expires
November 25, 1940

[fol. 174] EXHIBIT "C" TO AMENDED ANSWER, ETC.

ASSIGNMENT.

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State", approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordidnated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Divi-

(d) That they purport to delegate to the Secretary of the Interior and the district power to enlarge or modify the legal authority of the district by the terms of the contract;

(e) That they purport to delegate to the Secretary of Interior and the district the ascertainment of benefits in accordance with which assessments may be made by the district.

X.

The foregoing specifications as to matters wherein said contract is invalid are not intended to be all inclusive, and this defendant does not waive his right to raise, argue and [fol. 143] have determined any and all questions which may exist as to the invalidity of said contract.

Third Defense:

As and for a Third Separate and Further Defense to Plaintiff's Complaint, Defendant Admits, Denies and Alleges:

I.

That paragraph I, II, III, IV, V, VI, VII, VIII, IX and X of the first defense herein are hereby referred to and made a part of this third defense with the same force and effect as if set out herein word for word.

II.

That said complaint does not, nor does any part, section or paragraph thereof, state facts sufficient to constitute a cause of action.

Wherefore, this defendant prays that judgment be entered that plaintiff take nothing by its complaint; that a declaration be made of his legal rights and duties and the rights and duties of plaintiff and of the United States in relation to said contract; and for all other proper relief.

W. R. Bailey and Harry W. Horton, by W. R. Bailey, Attorneys for Defendant, Courtney McCracken.

Verified by Courtney McCracken, Nov. 13, 1950.

sion of Water Rights of the Department of Public Works of the State of California, those certain applications for [fol. 175] permits to appropriate unappropriated waters of the San Joaquin River, designated therein as Applications Nos. 5637 and 5638; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, that certain application for permit to appropriate unappropriated waters of the San Joaquin River, designated therein as Application No. 9369; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518, provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

WHEREAS, The United States of America is now engaged [fol. 176] in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the

[fol. 155] In Superior Court of Tulare County

No. 39627

Amended Answer of Defendant, The People of the State of California, and Answer of the Defendant Water Project Authority of the State of California—Filed March 30, 1951

Comes now the Attorney General of the State of California and appears and answers for the People of the State of California, and for the Water Project Authority of the State of California pursuant to a resolution of said Authority dated March 27, 1951, attached hereto and marked Exhibit "A", and referred to and incorporated in this answer as if set forth at length herein, and alleges in behalf of said defendants as follows:

I.

That the State of California is one of the United States of America; that this answering defendant appears in the sovereign governmental, and proprietary capacities of said State, in its own interest and for the protection of its own rights; also as parens patriae, in the interest of and for the protection of all its citizens, residents, landowners and water users, and its agency, the plaintiff district, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust, hereinafter described which trust relates to the use of water in the Central Valley [fol. 156] Project hereinafter mentioned; also as absolute owner of the corpus of the water to be used in and by said Central Valley Project and as owner of the right of reversion of any rights to the use of such water which may be forfeited or otherwise terminated for non-use or otherwise; and as trustee for the use and benefit of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project certain waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which water will be commingled and used for the purposes of said project. That

the Water Project Authority of the State of California is a body politic and corporate organized and existing under the laws of the State of California and appears pursuant to leave of court granted on March 8, 1951.

II.

Allege that Central Valley Project is a multiple-purpose project designed and planned for the general purposes of irrigation of arid lands in the Great Central Valley of California, improvement of navigation, river regulation, flood control, incidental development of hydroelectric power, repulsion of salt water within the delta of the Sacramento and San Joaquin Rivers, and other purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin Rivers, and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial purposes, of the water of the Sacramento and San Joaquin Rivers and their tributaries, that said waters arise, flow and discharge into the Pacific Ocean wholly within the State of California; [fol. 157] that there are no public lands of the United States in said Great Central Valley; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set out and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins are hereby referred to and incorporated by reference in this answer.

III.

Allege that by act of its Legislature adopted August 5, 1933 and effective January 13, 1934 (California Statutes 1933, p. 1042) the State of California authorized the construction of the Central Valley Project and created a state agency designated "Water Project Authority of the State

of California," and authorized said Authority to construct, maintain and operate said project and to use therefor the proceeds of sale of certain state bonds authorized by said Act; that following the adoption of said Act it became and was impracticable for the state to sell said bonds and construct the project; that by the Acts of Congress designated the Emergency Relief Appropriation Act of 1935 and the Rivers and Harbors Act of 1935, by executive orders signed by the President September 10, 1935, and November 16, 1935, a finding of feasibility signed by the Secretary of the Interior and approved by the President December 2, 1935, and the Acts of Congress designated the Rivers and Harbors Act of 1937, and the Rivers and Harbors Act of 1940, [fol. 158] and the Act of Congress approved October 14, 1949, Public Law No. 356, 81st Congress, first session, and the Act of Congress approved September 26, 1950, Public Law 839, 81st Congress, second session, the Secretary of the Interior was authorized to construct said Central Valley Project and has undertaken and entered upon the construction of said project; that certain features of said project have been constructed and others are approaching completion of construction.

IV.

Allege that the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plant, and appurtenances thereof;

(2) Contra Costa Conduit, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(3) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said Delta Cross-Channel to the Mendota Pool in the San Joaquin River;

(4) Friant Dam and reservoir on the Upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant [fol. 159] reservoir southerly to a point on Kern River near Bakersfield.

V.

Allege that the contract dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract," and mentioned in Article 16(d) of the contract, which is sought to be validated in plaintiff's complaint herein, and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriate and prescriptive rights, contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by them to use for irrigation and other purposes, waters of the San Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Canal; that the United States entered into all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San Joaquin River arising above said reservoir and divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it [fol. 160] is intended and proposed by the contract herein

sought to be validated that the United States shall deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the same through Friant-Kern Canal for irrigation of the lands in plaintiff district.

VI.

Allege that the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, heretofore filed certain applications with the Division of Water Resources of the Department of Public Works of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said Statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes, and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta [fol. 161] Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and

25, T.10, S.R.21 E.M.D.B.&M. and at Friant Dam for irrigation, domestic and flood control purposes; that a true copy of said assignment dated September 3, 1938, is hereto attached, marked Exhibit "B" and a true copy of said assignment dated September 30, 1939, is hereto attached, marked Exhibit "C" and said copies are by reference made a part hereof."

VII.

Allege that the State of California has not assigned to the United States, nor to anyone, any of the applications to appropriate water on the tributaries of the Sacramento and San Joaquin Rivers, hereinabove mentioned, except as specified in application 9364, referred to in paragraph VI hereof.

VIII.

Allege that by virtue of the terms of said assignments the State of California has become and is the trustor or grantor of an express trust; the United States has become and is the Trustee of that trust; the landowners to acquire rights to the use of water from the works of the Central Valley Project including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 16(d) of the contract herein sought to be validated, and similar or [fol. 162] comparable contracts, and under the assignments, Exhibits "B" and "C" hereto, are held by the United States as such trustee under said express trust and as a part of a trust fund or res for the use and benefit of the Central Valley Project and the landowners to acquire rights to the use of water from the works of said project, and in particular the landowners of plaintiff district; that the State of California, as trustor or grantor and as parens patriae, is entitled to be heard, among other things, as to all matters relating to the administration and execution of said trust by said trustee and entitled to require that the trustee administer said trust according to its true intent and meaning.

IX.

Allege that said Central Valley Project will provide a stabilized source of supplemental water supply for irrigation and other purposes for many hundreds of thousands of acres of land now under cultivation and irrigation in the Great Central Valley of California; that the construction, operation and maintenace (sic) of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing more than half of the cultivated agricultural lands of the State; that twenty or more contracts between the United States of America and irrigation and water districts organized under California law, generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that questions of law and fact identical with or similar to those involved in the [fol. 163] case at bar will be presented in said future validation actions; that the original cost estimate of the Bureau of Reclamation, made in 1936, for the construction of said Central Valley Project was $170,000,000; that the last official estimate disclosed by the Bureau of Reclamation for the cost of construction of said Project, made in January, 1950, was $581,886,000; that said last estimate is believed to include the cost of the American River Development which was added to said project by Act of Congress adopted October 14, 1949, but does not include the cost of the Sacramento Valley Canals added to said project by Act of Congress adopted September 26, 1950; that the estimate of cost of said Sacramento Valley canals made by the Bureau of Reclamation in May, 1949, was from $40,000,000 to $65,000,000; that said Secretary and said Bureau of Reclamation seek and have, by official report to Congress, recommended the expansion of said Central Valley Project to include units and features in addition to those now authorized for construction by the Congress, which said Bureau estimates will cost in excess of $3,000,000,000; that said expanded Central Valley Project is generally described and outlined in the report of said Bureau entitled "Central Valley Basin," being Senate Document 113,

Eighty-first Congress, first session, to which reference is hereby made; that the construction, operation and maintenance of said expanded Central Valley Project would profoundly affect the economy and welfare of the owners of several million acres of land, now irrigated or unirrigated, in the Great Central Valley of California, and of several millions of the citizens, residents, landowners and water-users of the State.

[fol. 164] X.

Allege that the United States is one of the parties defendant described in the caption of plaintiff's complaint and in paragraph II of said complaint, and is a party to this action.

XI.

Allege that the validity of the contract marked Exhibit "A" to the complaint does not depend on whether the United States has rights to the water to be delivered by it pursuant to the contract or rights to the use thereof or title or ownership thereto; and further that an adjudication of such rights to water or the use thereof or title or ownership thereto is not appropriate in this proceeding, and that such an adjudication herein would be contrary to the best interests of the State and of the United States; and further, there are appended hereto true copies of correspondence between the Secretary of the Interior of the United States and the Attorney General of the State of California consisting of three letters as follows: letter dated March 5, 1951, signed by Oscar L. Chapman as Secretary of Interior, marked Exhibit "D"; letter dated March 22, 1951, signed by Edmund G. Brown, as Attorney General, marked Exhibit "E"; letter dated March 27, 1951, signed by Oscar L. Chapman as aforesaid and marked Exhibit "F". That aforesaid Exhibits are hereby referred to and incorporated in this answer as if set forth at length herein.

Wherefore, the State of California prays as follows:

(1) that the district's legal capacity and authority to enter into the contract, the proceedings on the part of the dis-

trict for the authorization of the execution of the contract, and the execution of the contract between the Ivanhoe [fol. 165] Irrigation District and the United States be confirmed and declared valid; and (2) that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the State of California or of its agencies, including but not limited to the Ivahoe Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or all or any of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved inthe (sic) Central Valley Project.

And Wherefore, the Water Project Authority which is not taking any position on the validity of the contract between the Ivanhoe Irrigation District and the United States, prays that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the State of California or of its agencies including but not limited to the Ivanhoe Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or any or all of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved in the Central Valley Project.

Edmund G. Brown, Attorney General, State of California, B. Abbott Goldberg, Deputy Attorney General, Attorneys for People of the State of California and for the Water Project Authority of the State of California.

[fol. 166] EXHIBIT "A" TO AMENDED ANSWER, ETC.

WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA
PUBLIC WORKS BUILDING
TWELFTH AND N STREETS
SACRAMENTO, CALIFORNIA

CHAS. G. JOHNSON
STATE TREASURER

THOMAS H. KUCHEL
STATE CONTROLLER

C. H. PURCELL
DIRECTOR OF PUBLIC WORKS
CHAIRMAN

JAMES S. DEAN
DIRECTOR OF FINANCE

EDMUND G. BROWN
ATTORNEY GENERAL

A. D. EDMONSTON
STATE ENGINEER
EXECUTIVE OFFICER

Address All Communications to Executive Officer.

Resolution Adopted by the Water Project Authority at Regular Meeting held on March 27, 1951.

WHEREAS, there is now pending in the Superior Court of the State of California in and for the County of Tulare, a proceeding entitled "Ivanhoe Irrigation District vs. All Parties and Persons, Etc.,", said proceeding being numbered 39627 in said Superior Court for the purpose of validating a contract entered into between said District and the United States for the delivery of water and construction of distribution facilities; and

WHEREAS, by order of said Court in said proceeding dated [fol. 167] March 8, 1951, a default of all persons, excepting those who had filed appearances in said proceeding, was set aside so far as the Water Project Authority of the State of California was concerned, said order granting this Authority the opportunity of appearing in said proceeding if it be so disposed; and

WHEREAS, in said proceeding contentions have been made to the effect (1) that the title to the water proposed to be delivered to the Ivanhoe Irrigation District by the United States, acting by and through the Bureau of Reclamation of the Department of the Interior, and the right of the State to require compliance with State law with reference

to the obtaining of proper permits to appropriate said water and the rights of the State to impose and enforce conditions respecting methods of diversion and use of said water, all as provided by State law, are necessarily involved in the proceeding now pending; and (2) that a validation of the contract before the Court might supersede or impair the powers of the State with regard to the matters above mentioned; and

WHEREAS, the Attorney General of the State of California has expressed himself to this Authority that in his opinion a validation of the contract involved in the proceeding would have no effect whatever upon the title to the water proposed to be delivered to said District or to any other water acquired or to be acquired for purposes of the Central Valley Project or upon any other of the matters above mentioned, and that said matters are not in any way involved in said proceeding; and that it is his intention to file in said proceeding an additional amendment to the answer therein specifically alleging and asserting the contentions involved in the aforesaid opinion, and [fol. 168] requesting that the Court shall include in any final decree rendered in the said proceeding a clear and specific statement that the matters above mentioned are not therein involved and are not passed upon therein; and

WHEREAS, the Attorney General has received letters dated March 5 and March 27, 1951, from Honorable Oscar L. Chapman, present Secretary of the Interior of the United States, expressing a like view, copies of said letters having been furnished to this Authority and included in its files; and

WHEREAS, any doubt as to whether the matters herein specified are involved in said proceeding can and should be resolved by specific declaration of the Court in any decree rendered therein that such matters are not involved and are not passed upon, or determined.

NOW, THEREFORE, BE IT RESOLVED BY THIS AUTHORITY that the Attorney General be and he is hereby requested on behalf of this Authority to take such action as may be appropriate in the premises to protect the interests of

the State of California and of this Authority by making every possible effort to the end that any final decree rendered in the above mentioned proceeding shall clearly and specifically state that the matters above mentioned are not involved in said proceeding and are not passed upon therein.

[fol. 169] EXHIBIT "B" TO AMENDED ANSWER, ETC.

ASSIGNMENT

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State", approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications

[fol. 170] for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Application Nos. 5625 and 5626; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Applications Nos. 9364 and 9365; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518, provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

WHEREAS, The United States of America is now engaged [fol. 171] in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the First Deficiency Appropriation Act, fiscal year 1936 (49

Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the waters of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder:

NOW, THEREFORE, in pursuance of the discretion and judgment vested in it by the aforesaid Act of April 29, 1927, as amended the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources [fol. 172] of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by The United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to The United States of America, and its assigns, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid applications Nos. 5625,

5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder, subject to depletion of the stream flow above Shasta (formerly Kennett) Dam by the exercise of lawful rights to the use of water for the purpose of development of the counties in which such water originates, whether such rights have been heretofore or may be hereafter initiated or acquired, such depletion not to exceed in the aggregate four million five hundred thousand (4,500,000) acre-feet of water in any consecutive ten-year period, and not to exceed a maximum depletion in any one year in excess of seven hundred thousand (700,000) acre-feet.

IN WITNESS WHEREOF, the Department of Finance of the State of California, acting by and through the Director of Finance, has caused this assignment to be executed [fol. 173] this 3rd day of September, A. D. nineteeen hundred thirty-eight.

DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA

By ARLIN E. STOCKBURGER
Director of Finance.

(Seal)

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

On this 3rd day of September, A. D. nineteen hundred thirty-eight, before me, R. N. Philpot, a Notary Public in and for the said County and State, personally appeared Arlin E. Stockburger, Director of Finance of the State of California, known to me to be the Director of Finance of the State of California, the Department of the State of California that executed the within instrument, known to me to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State of Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5637, 5638 and 9369, and such appropriations of the waters of said river as were made thereby and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder;

Now, Therefore, in pursuance of the discretion and judgment vested in it by the aforesaid act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California, but is in furtherance [fol. 177] thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by The United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to the United State of America, to be exercised by and through its Bureau of Reclamation, for the use and benefit of said Central Valley

Project, California, all its right, title and interest in and to the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder.

IN WITNESS WHEREOF, the Department of Finance of the State of California, acting by and through the Director of Finance, has caused this assignment to be executed this 30th day of September, A. D., nineteen hundred thirty-nine.

DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA,

PHIL S. GIBSON
Director of Finance

By: George Killion
GEORGE KILLION, Deputy

[fol. 178] ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

On this 30th day of September, A. D., nineteen hundred thirty-nine, before me, LOIS K. DAUBE a Notary Public in and for the said County and State, personally appeared George Killion, Deputy Director of Finance of the State of California, known to me to be the Deputy Director of Finance of the State of California, the Department of the State of California that executed the within instrument, known to me to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

LOIS K. DAUBE
Notary Public in and for said
County and State

My commission expires
July 16, 1942

State of California)
)
Department of Public Works) ss.
)
Division of Water Resources)

Certificate 4555
Application .....
Permit .....
License .....

I, Timothy C. Cronin, Certification Clerk of the Division of Water Resources, Department of Public Works, State of California, do hereby certify that I have carefully compared the photostatic copy of assignment to which this certificate is attached, with the original of said assignment [fol. 179] in the records of the Division of Water Resources, Department of Public Works, State of California and that the same is a true, full, complete and correct copy of the original thereof on file in this office.

Witness my hand and seal of the Department of Public Works State of California, this 13th day of October, 1950.

Timothy C. Cronin
Certification Clerk, Division of
Water Resources.

[fol. 180] Exhibit "D" to Amended Answer, etc.

United States
Department of the Interior
Office of the Secretary
Washington 25, D. C.

March 5, 1951

Air Mail

My dear General Brown:

I am glad to be able to give you my views on certain questions which you have conveyed to me orally through Chief Deputy Attorney General Levit concerning the effect of validation proceedings under California law upon the resolution of water rights questions under State and Federal law.

I have discussed these questions with our attorneys and, as we understand them, we are in accord with your views. As I understand it, the purpose and effect of a validation proceeding, which is required by Federal statute and permitted under the California statutes, is merely to obtain a judicial decree confirming the authority of the district to enter into the particular contract with the United States and thereby confirming the validity of the contract, just as in the case of a bond validation proceeding. Questions with respect to the historical, present, and future ownership of water or water rights would seem to me to be immaterial to the question whether a particular contract for water service or for the construction of a distribution system, or both, is a valid one and to the question of the authority of the district to enter into it. In short, I do not understand that a finding that the contractual obligations are [fol. 181] valid is determinative of the title to the water.

If this is true, then it follows that any controversy with respect to whether "ownership" of the water which the United States contracts to furnish to the district is in the United States, the State, or elsewhere (a controversy which to me would seem to be wholly unnecessary as a practical matter in any event) would not appear to be for resolution in a proceeding for the validation of a contract.

Furthermore, the resolution of the question whether an individual water user or a district may have a legal right to demand the continued delivry of project water *after* the expiration of the 40-year term of a water service contract clearly is not affected by a finding that the contract itself is binding *during* its own express term.

As for rights to the use of water which have already vested and which are recognized under State law, it is elementary that they cannot be adversely affected by the operations of the United States without just compensation.

These views, I am informed, were expressly stated by counsel for the Bureau of Reclamation during oral argument on the demurrer to the complaint in the Ivanhoe Irrigation District proceeding, in which they appeared as amici curiae.

I hope that I have adequately responded to your inquiry and I and Washington and Sacramento representatives of

the Bureau of Reclamation will be glad to cooperate with you in any further way we can.

[fol. 182] Sincerely Yours,

(Sgd) Oscar L. Chapman
Secretary of the Interior

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California

Copy to: Regional Director, Sacramento, Calif.
Regional Counsel, Sacramento, Calif.

[fol. 183] Exhibit "E" to Amended Answer, etc.

State of California

Edmund G. Brown
Attorney General

Bert W. Levit
Chief Deputy Attorney General

H. H. Linney
Chief Assistant Attorney General
Division of Civil Law

Arthur H. Sherry
Chief Assistant Attorney General
Division of Criminal Law and Enforcement.

Department of Justice
Office of the Attorney General

March 22, 1951

Honorable Oscar L. Chapman
Secretary of the Interior
United States Dept. of the Interior
Washington 25, D.C.

Dear Mr. Secretary:

I have not yet had an opportunity to acknowledge your letter of March 5, relative to the pending validation suits, and do so now.

Your letter correctly states my views with respect to the purpose and effect of these proceedings, and I am glad to note that you concur. However, I should appreciate a further expression from you concerning the scope and effect of the contracts themselves, which, of course, are the basis [fol. 184] of the validation proceedings; and in particular, I refer to the so-called water service and distribution system contract between the United States and the Ivanhoe Irrigation District which is now before the Superior Court of Tulare County for validation.

It is my view that this contract is not intended to and does not deal with, determine, or settle any questions with respect to the historical, present or future claims of ownership of water or water rights that are now or that may hereafter be urged by the United States, the State of California, the Ivanhoe Irrigation District, or individual or corporate landowners or users of the water, the furnishing of which is provided for by the said contract.

Statement of your views on this additional matter will be appreciated. It is understood, of course, that the contract, if confirmed, will itself obligate the United States to furnish and entitle the District and the landowners to receive certain quantities of water in the circumstances and upon the terms and conditions therein recited, and nothing stated in this letter (or concurred in by you, if you do concur,) is meant to disparage, limit, or modify in any way any of the provisions contained in the said contract.

Yours very truly,

EDMUND G. BROWN
ATTORNEY GENERAL

EGB:AS

[fol. 185] EXHIBIT "F" TO AMENDED ANSWER, ETC.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D. C.

March 27, 1951

My dear General Brown:

In your letter of March 22 you have expressed certain views concerning the scope and effect of the water service and distribution system contract between the United States and the Ivanhoe Irrigation District, for which a validation proceeding is now pending in the Superior Court of California in and for the County of Tulare, and you have requested my opinion on the accuracy of those views.

I am in agreement with what I understand to be your views, and, for reasons which will be set forth, I do not regard either the validation proceeding or the contract itself as affecting the ownership of water or water rights.

As you know, the Central Valley Project supply from which the Bureau of Reclamation will furnish irrigation and municipal water to contracting entities is derived from two sources: (1) certain applications for appropriations filed with the California Division of Water Resources by the State Director of Finance and assigned by him to the United States pursuant to section 10504 of the California Water Code, as well as certain applications for appropriations which have been filed directly by the United States with the State Division of Water Resources, pursuant to section 8 of the Reclamation Act of 1902, and (2) [fol. 186] contracts with and deeds from a large number of individuals and corporations, by which the United States has acquired rights with respect to the water of the San Joaquin River. Principal in the latter category is the so-called purchase and exchange contract with Miller and Lux, Inc.

The United States, in turn, under the authority of section 9(e) of the Reclamation Project Act of 1939, is entering into contracts with districts organized under California law by which it agrees to furnish certain amounts of

project water to the districts for a period of 40 years on certain conditions and at defined rates. I cannot conceive that these contracts in any way raise, involve, or resolve any questions with respect to the ownership of water or water rights. When the contracts have been decreed to be valid and binding the districts have enforceable rights to demand that certain quantities of water be furnished to them by the United States in accordance with the terms of the contracts, and the United States has enforceable rights to collect payments from the districts in accordance with the terms of the contracts.

More specifically, it is the view of the Department that the position of an irrigation district or a landowner in the Central Valley Project with respect to the ownership of water or water rights is no different from what it would have been had the State of California pursued its original plan to construct and operate the Central Valley Project through the State's Water Project Authority, and to deliver water to the districts under the form of long-term contract then proposed. As I already have pointed out, the sources of the project water supply are in transactions which took place pursuant to and in accordance with the law of California.

[fol. 187]

Sincerely yours,

(Sgd.) OSCAR L. CHAPMAN
Secretary of the Interior.

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California

Air Mail

[fol. 192] In Superior Court of Tulare County

No. 39627

Answer of Defendant, the State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California—Filed June 26, 1952

Comes now A. D. Edmonston, as the State Engineer and Chief of the Division of Water Resources of the Department of Public Works of the State of California and appears and answers the complaint of the plaintiff herein and alleges as follows:

I.

That the defendant, A. D. Edmonston, is the duly appointed, qualified and acting State Engineer and Chief of the Division of Water Resources, Department of Public Works, of the State of California.

II.

That the duties, powers, and jurisdiction vested in the Department of Public Works of the State of California in and by the Water Code of the State of California, and in particular in and by Division II thereof are administered and exercised by and through the State Engineer.

III.

That this answering defendant is appearing herein pursuant to leave of court granted on the 17th day of April, 1952, to appear and take all appropriate action in this proceeding. That this answering defendant's authority and responsibilities are derived in part from and based upon [fol. 193] Article XIV, Section 3, of the Constitution of the State of California as expressly declared and set forth in and by Section 1 of the Water Commission Act of the State of California, Statutes of 1913, Chapter 586, as amended by Statutes of 1939, Chapter 838, the first two paragraphs whereof are now codified as Section 100 and Section 275 of the Water Code of the State of California, as amended.

IV.

That, as declared in Section 102 of the Water Code, all water within the State is the property of the people of the State but the right to the use thereof can be acquired by appropriation only upon compliance with the provisions of Division II of said Water Code of the State of California.

V.

That the central Valley Project is a multiple-purpose project designed, planned and functioning for the general purposes of irrigation of arid lands in the Great Central Valley of California, and other purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin rivers, and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial purposes, of the water of the Sacramento and San Joaquin rivers and their tributaries, that said waters rise, flow and discharge into the Pacific Ocean wholly within the State of California; that there are no irrigable public lands of the United States within the service area of said Central Valley Project in said Great Central Valley; that said project was planned and generally designed by the State of California; that the plans, [fol. 194] purposes and features of said project are substantially as set forth and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins and the reports contained therein are official documents of the executive department of the State of California and contain evidence material and relevant to this proceeding which the Court is required by law to judicially notice.

VI.

That said Central Valley Project was primarily designed to provide, and does and will provide a stabilizing source

of supplemental water supply for irrigation, and other purposes incidental thereto, on a vast acreage of lands now under irrigation, in the Great Central Valley of California, which lands without such supplemental water supply would have inadequate sources of supply; that the construction, operation, maintenance and management of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing several million acres of land comprising more than half of the cultivated agricultural lands of the State.

VII.

That the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant and Keswick Dam and power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plants, and appurtenances thereto;

[fol. 195] (2) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said delta to the Mendota Pool on the San Joaquin River;

(3) Contra Costa Canal, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(4) Friant Dam and reservoir on the upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant Reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant Reservoir southerly to a point on Kern River near Bakersfield;

(7) Folsom Dam and reservoir and hydroelectric power plant on the American River near the City of Folsom,

with certain electric transmission lines leading from said power plant, and appurtenances thereto, and related works.

VIII.

That the Secretary of the Interior of the United States, by and through its Bureau of Reclamation, was authorized to construct the Central Valley Project in and by acts of Congress designated the Rivers and Harbors Act of 1937, the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, and Act of Congress approved September 26, 1950, and to operate and maintain the same and in particular to execute repayment contracts in order to recover to the United States Treasury the reimbursable cost of the project allocated to irrigation [fol. 196] and assigned for return by the water users in accordance with the provisions of the Federal reclamation laws, as amended.

That the United States acting through the Secretary of the Interior and its Bureau of Reclamation, has substantially completed construction of such project (with exception of that portion thereof set forth in subsection (7) of paragraph VII hereof), and is now operating and maintaining the usable completed works of said project, and is required so to do, pursuant to said Federal reclamation laws.

IX.

That by contract dated July 27, 1939, between the United States and the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract", and mentioned in Article 16 (d) of the contract which is sought to be validated in plaintiff's complaint herein, and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by

them for use for irrigation and other purposes, in and to the water of the San Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping [fol. 197] Plant and the Delta-Mendota Canal; that the United States entered into all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San Joaquin River rising above said reservoir and to divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the same through Friant-Kern Canal for irrigation of lands in plaintiff district.

X.

That the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, prior to the filing of this proceeding filed certain applications with the State Engineer and Chief of the Division of Water Resources of the Department of Public Works of the State of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Appli-

cation No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes, and Application [fol. 198] No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10 S., R. 21 E., M.D.B. & M., and at Friant Dam for irrigation, domestic use and flood control purposes; that said assignments and said applications so assigned constitute official acts of the executive branch of the State of California which this Court is required by law to judicially notice.

XI.

That by virtue of the terms of said assignments the State of California has become and is the trustor of an express trust; the United States has become and is the trustee of that trust; the landowners, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 16 (d) of the contract herein sought to be validated, and similar or comparable contracts, and by the [fol. 199] assignments to which reference is made in Paragraph X hereof, are held by the United States as such trustee under said express trust and as a part of the trust fund or res for the use and benefit of the plaintiff district

as the representative of the landowners therein, in order to, among other things, preserve to such landowners the right to acquire permanment (sic) rights to the use of water from the works of said project pursuant to the laws of the State of California and of the United States; that the United States has not and will not own or have any right of ownership or title to any water of the State acquired or to be acquired for purposes of said project other than as such trustee; that unless such status and relationships are recognized to exist and are protected by this Court in its decision herein, the effect of said contract, if it be validated, will be to create uncertainty and doubt as to those matters and will thereby cast doubt upon the authority and jurisdiction of this answering defendant to discharge his responsibilities under California law.

XII.

That the Secretary of the Interior in constructing, operating, and maintaining said project is under mandate from the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, to acquire any and all rights to the use of water required for project purposes pursuant to the laws of the State of California relating thereto, and in operating said project to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation; that the United States has acquired, and is proceeding to acquire appropriative [fol. 200] and other rights of various characters to the use of water for purposes of said project, all solely as such trustee, and in delivering said water is required to do so solely as a carrier and distributor of such water to the beneficiaries of such trusts.

XIII.

That an adjudication of rights to the use of water to be delivered through the works of the Central Valley Project to the plaintiff district is not properly within the scope of the issues in this proceeding.

XIV.

That it is the expressed plan and objective of the Secretary of the Interior that the use of water throughout said Central Valley Project shall be governed exclusively by contracts pursuant to Section 9(e) of the Act of Congress designated the Reclamation Project Act of 1939, which contracts are and will be generally similar or comparable to that portion of the contract herein sought to be validated relating to delivery of water; that 20 or more such contracts between the United States of America and irrigation and other types of water districts organized under California law, generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that considerations of law and facts identical with or similar to those involved in the case at bar will be presented in said future validation actions.

XV.

That the said contract sought to be validated in this pro- [fol. 201] ceeding does not provide for, nor recognize the right to acquire a perpetual and appurtenant right to the use of water on the part of the plaintiff district and its landowners nor any right therein or thereto beyond the term of forty years as specified in said contract; that said contract does not, by its terms, and will not enable the district to secure any right to the use of said water to be delivered to it by the United States and applied to beneficial use by its landowners, beyond the term of years specified in said contract; that said contract does not provide specifically for any credit to the district of any construction cost component in the rates provided to be paid by the district to the United States for said water so to be delivered; that said contract is not a repayment contract providing for the return to the United States treasury of the proportion of the construction cost obligation of said Central Valley Project allocated to irrigation and assigned for return by the said district, as provided for by the Federal reclamation laws; that the said

contract sought to be validated herein may nevertheless be validated in this proceeding if construed as a temporary or interim contract upon the grounds that at the present time it may not be feasible or possible for the plaintiff district and the United States to determine upon the terms of and to enter upon and execute such repayment contract because of additions of new units to the project which are under construction but not yet completed, and also because of units of said project which are authorized for construction but upon which construction has not commenced; that, being construed as a temporary or interim contract, there will be thereby preserved to the plaintiff district and the landowners therein the opportunity, at the proper time, to enter into such repayment contract whereby the [fol. 202] plaintiff district and its landowners as beneficiaries under the express trust as hereinabove alleged may be assured of or acquire permanent rights to the use of water from the works of said project pursuant to the laws of the State of California.

Wherefore, this answering defendant prays as follows:

That in the event this Court validates the contract in issue in this proceeding, the decision and judgment of this Court recite and confirm: (a) That the United States has not and does not acquire any beneficial interest or right of ownership or title in and to any waters of the State of California for purposes of said project by virtue of or pursuant to this proceeding or by virtue of or pursuant to the contract as validated by this Court; (b) the trust status of the United States in relation to the subject matter of the contract, a portion of the waters of the State of California; (c) the beneficial interests of the plaintiff district and its landowners therein as beneficiaries of such trust; (d) the status of the State of California in respect to the water to be delivered pursuant to said contract and its powers in respect thereto; (e) that neither the contract nor the validation thereof shall preclude said district and its landowners from acquiring a perpetual supply of water, appurtenant to the lands irrigated to the extent beneficial use is made thereof subject only to the payment of lawful charges for the delivery thereof, and

such conditions as are or may be in accordance with the laws of this State and of the United States applicable thereto; and further, (f) that this Court is not required to, does not, and does not purport to determine, define, limit or in any manner or at all, affect the powers and duties or authority and responsibilities of this answering [fol. 203] defendant under the laws of the State of California; and

For such other and further relief as may be proper in the premises.

Department of Public Works of the State of California, by A. D. Edmonston, State Engineer and Chief of the Division of Water Resources.

Henry Holsinger, Irving Pfaffenberger, Gavin M. Craig, by Henry Holsinger, Attorneys for the State Engineer, and Chief of the Division of Water Resources, Department of Public Works of the State of California.

[fol. 237] In Superior Court of Tulare County

No. 39627

Findings of Fact and Conclusions of Law—Filed February 27, 1953

In this proceeding the Ivanhoe Irrigation District, a water users' organization formed and existing under the laws of the State of California, seeks the validation of a purported contract dated September 23, 1949, between itself and the United States of America, acting by the Secretary of the Interior and the United States, Bureau of Reclamation. The proceeding, pursuant to Section 23225 of the Water Code of the State of California, is in response to the provisions of Federal law and the contract making the effectiveness of any such contract dependent upon such validation. The proceeding is *in rem* and the decree entered herein will bind, among others, the landowners of all of the land within the Ivanhoe Irrigation District,

and the State of California, and every agency thereof; under Section 22680 of the California Water Code, the provisions of the contract are rendered inseparable and the judgment, therefore, must declare the contract either valid or invalid. The contract deals, among other matters, with the supplying of water from the works of the Central Valley Project by the United States Bureau of Reclamation to the District limited to a period of 40 years, and purports to impose various conditions and obligations upon the District with respect to the use and disposition of such water. In these circumstances, it is necessary to a decision as to the validity of the contract that the respective relationships of the United States, the State of California, the District and its landowners, with respect to such water be considered and determined.

[fol. 238] This proceeding was instituted by Ivanhoe Irrigation District by the filing of its complaint or petition on the 31st day of October, 1949, and by the publication of summons thereon. In response thereto the State of California by and through the then Attorney General appeared on behalf of the People of the State of California by demurrer. Ivanhoe Irrigation District, after due notice, moved to strike the appearance of the State of California, which motion was denied. Thereafter an answer on behalf of the People of the State of California as a defendant to said proceeding, was filed by the then Attorney General of California.

The Regional Counsel and the Assistant Regional Counsel for the Bureau of Reclamation of the Department of the Interior of the United States on due notice moved to appear in the proceeding throughout as amici curiae. The appearance in this manner was objected to on the grounds that any interested party should appear, not as amicus curiae, but as a party to the proceeding and by appropriate pleading and representation as parties to the proceeding. Leave to appear amici curiae was granted and Counsel for the Department of Interior, Bureau of Reclamation, participated throughout the proceedings.

The Di Giorgio Fruit Corporation moved to appear in the proceeding as amicus curiae and was granted leave to do so. Counsel for the Di Giorgio Fruit Corporation

participated in oral argument and filed a brief amicus curiae.

Courtney McCracken, as an owner of land within Ivanhoe Irrigation District, appeared by demurrer and thereafter by answer.

[fol. 239] The matter being at issue, the cause was set for trial in March of 1951, at which time the then Attorney General of the State of California appeared and requested leave to withdraw the answer theretofore filed by the previous Attorney General, and for leave to file an amended answer on behalf of the People of the State of California. The matter of the Water Project Authority of the State of California being a necessary party to the proceeding having been considered and an opportunity having been given to the Water Project Authority of California to appear, leave to file an amended answer on behalf of the People and leave to file an answer on behalf of the Water Project Authority of the State of California was given, and thereafter an amended answer on behalf of the defendant, the People of the State of California, and an answer on behalf of the Water Project Authority of the State of California were filed. Thereafter and by leave of Court an additional and separate answer on behalf of the State Engineer and the Chief of the Division of Water Resources, Department of Public Works of the State of California, was filed by and through separate counsel therefor.

The issues herein were thereupon joined upon the complaint of Ivanhoe Irrigation District, the amended answer of the defendant the People of the State of California, the answer of the defendant Water Project Authority of the State of California, and the answer of the defendant, State Engineer of California, and the Chief of the Division of Water Resources, Department of Public Works of the State of California, and the answer of the defendant McCracken.

The cause having proceeded to trial upon the issues so [fol. 240] joined and upon the issues necessarily resulting from said proceeding and the matter having been heard, briefed, and argued, and the Court having arrived at its decision and made and filed its written memorandum deci-

sion and order for findings and findings having been prepared and submitted to all parties concerned, and the Court having considered all matters relative to said Findings of Fact and Conclusions of law, now makes these, its Findings of Fact and Conclusions of Law and in connection therewith finds the facts to be as follows:

Findings of Fact

I.

That Ivanhoe Irrigation District, the plaintiff herein, is now and has been at all times since January 8th, 1948, an irrigation district duly organized and existing as such under and by virtue of the laws of the State of California. That the office of the board of directors of Ivanhoe Irrigation District and its principal place of business is now and has been at all times h in mentioned located in the town of Ivanhoe, County o. Tulare, State of California. That the lands within said Irrigation District are now and were at all times herein mentioned in the County of Tulare, State of California.

II.

That for many years prior to 1948 the State of California had been making studies, developing plans and proceeding with an over-all plan for the conservation, storage and distribution of water from its intrastate streams and sources of water supply to the end of having and furnishing of a supplemental supply of water where needed to developed areas and the furnishing of a supply of water [fol. 241] where needed and as available to undeveloped areas. That as a part of this over-all plan of the State of California, there came into being a project which has become known and designated as the "Central Valley Project of California". That the Central Valley Project was, pursuant to act of the Legislature of the State of California enacted August 5, 1933, and duly approved upon referendum by the electors of said State on December 19, 1933, duly authorized as a coordinated plan for the development of the Sacramento and San Joaquin Rivers through a system of physical works for the primary purpose of

conserving, transporting, and by means of exchange of waters, making a supplemental supply of water available to agricultural lands within the said Central Valley Project possessing an insufficient supply of water; that for that purpose and deemed an indispensable part of said authorized project, works were planned and constructed, including the construction of Shasta Dam on the Sacramento River to store and conserve the waters thereof, and to make available by means of an exchange of waters, surplus waters from the Sacramento River to the large area of agricultural land in the San Joaquin Valley having an insufficient water supply, and to substitute, in part, such surplus waters from the Sacramento River for waters of the San Joaquin River impounded and diverted at Friant Dam on the San Joaquin River for use in the San Joaquin Valley; that the Central Valley Project is within the Great Central Valley of California, lying between the Sierra Nevada and the Coast Range and extending north and south a distance of approximately 450 miles; that said Great Central Valley consists of the Sacramento Valley in the north and the San Joaquin Valley in the south, the major rivers being the Sacramento and the [fol. 242] San Joaquin Rivers, respectively; that the Sacramento River runs in a southerly direction from its source in the Siskiyou and Sierra Nevada mountains in Northern California above the Shasta Dam, and the San Joaquin River runs in a northerly direction from its source in the Sierra Nevada mountains above Friant Dam and east of Fresno in the southerly portion of the San Joaquin Valley, both rivers converging in the common delta of said rivers in the upper reaches of the San Francisco Bay; that of the acreage in the two valleys about three-fifths lies in the San Joaquin Valley, while about two-thirds of the water production of the area comes from the Sacramento River; that as part of said authorized project, works were planned to impound and divert at Friant Dam the waters of the San Joaquin River northerly in the Madera Canal and southerly in the Friant-Kern Canal for the irrigation of lands generally, along the easterly side of the San Joaquin Valley, including service from the Friant-Kern Canal to the lands in the plaintiff district, the waters

so diverted to be replaced in major part by the transportation of excess and unneeded waters of the Sacramento River; that all waters utilized and to be utilized under said project plan rise and flow wholly within the State of California, and that for many years prior to the adoption of the project plan by the State there was, and now is, an extensive agricultural development within said San Joaquin Valley, including plaintiff district, and most lands within said Valley were, and now are, under production and under irrigation from privately acquired or developed sources of water supply; that much of the irrigation was and is by pumping from underground water supplies, and that the available surface and underground water supplies [fol. 243] were and are gradually being seriously reduced and were and are in need of replenishment.

That as a part of this general program, the facts concerning which are hereinafter more specifically found upon, the Director of Finance of the State of California filed applications to appropriate the unappropriated waters within the State of California. That among these applications were applications to appropriate water as and for a supplemental water supply for the area and lands now included within the boundaries of Ivanhoe Irrigation District.

III.

That Ivanhoe Irrigation District was organized for the purpose of procuring a supplemental water supply for the land within its boundaries. That upon its organization its board of directors, in an effort to procure a supplemental water supply in keeping with the long-standing water plans of the State of California, attempted to procure a contract for such a supply. That the Bureau of Reclamation of the Department of Interior of the United States of America, claiming to be the sole agency through which a supply might be obtained, offered a contract to Ivanhoe Irrigation District in the words, terms and figures of that contract set forth as Exhibit A attached to plaintiff's complaint herein. The area within Ivanhoe Irrigation District in 1949 had suffered, in common with other areas within the San Joaquin Valley, a period of insufficient rainfall and

was in need of a supplemental water supply. Being unable to obtain a supplemental water supply from any other source, and being unable to obtain any other or different contract than that proffered by the Bureau of Reclamation of the Department of Interior of the United States, said [fol. 244] Exhibit A, the board of directors of said Ivanhoe Irrigation District did, on or about the 24th day of May, 1949, pass that certain resolution set forth as Exhibit B attached to plaintiff's complaint.

IV.

That pursuant to said resolution, Exhibit B attached to said complaint, Ivanhoe Irrigation District did file with the Districts Securities Commission of the State of California the District's application for the examination, investigation, report and order of the Districts Securities Commission on said proposed contract. That upon consideration of said proposed contract by the Districts Securities Commission of the State of California, said Commission did conditionally approve said contract with the following provisos and limitations:

"The Commission has felt and still feels that this and other Bureau of Reclamation contracts contain provisions which appear to it objectionable and possibly in some respects contrary to constitutional and statutory law. However, the validity of the proposed contract, as required by its provisions, must be finally determined by a court of competent jurisdiction in validation proceedings and such is considered the appropriate forum to pass judgment thereon.

"The execution by the District of the proposed contract with the United States Government entitled, 'Contract between the United States and the Ivanhoe Irrigation District, providing for water service and for the construction of the distribution system', and iden- [fol. 245] tified by the mark 'Sacramento Office Draft 3-8-49 Rev. W. O. 4-27-49' is hereby approved.

"In reaching this decision, the objections of the Commission to the so-called '9(e)' or 'Utility-type Con-

tract', many of the provisions of which are deemed to be arbitrary and inequitable and lacking in mutuality, are largely overcome by the overwhelming evidence in support of the need of the area for additional water."

That said report and order of the Districts Securities Commission of the State of California is in the words, terms and figures as set forth in Exhibit C attached to plaintiff's complaint.

V.

That thereafter and in the month of May, 1949, the board of directors of Ivanhoe Irrigation District purportedly called a special election and purportedly submitted to the qualified electors within Ivanhoe Irrigation District the proposition for the approval or rejection of said proposed contract. Said matter being so submitted to the electors being that proposition set forth in paragraph V of plaintiff's complaint herein. That a purported special election was held in response to said notice and proposition specifically set out in said paragraph V of plaintiff's complaint. That at said election 251 votes were cast, 218 thereof being in favor of the approval of said proposition and 33 votes being cast against the approval of said proposition. The Court further finds that said special election was not duly called, noticed or held and that said special election was not legally and/or fairly conducted and in that regard the Court specifically finds that the notice [fol. 246] of election specifically represented to the voters within said District that a distribution system to each unit of not exceeding 160 acres of land within a total of 10,000 acres of land within said District would be constructed under said contract by the United States at a cost of not to exceed $1,589,807.00, which said cost was to be repaid in 40 equal annual installments without interest. That in truth and fact said notice of election and said proposition as noticed in said notice of election was false and fraudulent and a misrepresentation of the terms and provisions of said contract and said contract did not and does not conform to said notice of election and said contract does not contain or state the maximum principal costs to be

paid by the plaintiff District and/or the landowners therein for said completed distribution system and said notice of election does not correctly, but does incorrectly and erroneously set forth the purported provisions of said contract sought to be validated as the same relate to said distribution system. That said election notice does not contain a statement of the maximum amount of construction costs to be paid to the United States, either as to said distribution system and/or as to the portion of the construction costs of the major works of the Central Valley Project used or useful in connection with delivery of water to the plaintiff District and for which the landowners within said District and said District will be called upon to make repayment. That said election notice does not contain a statement or description of the property to be conveyed by the plaintiff District to the United States in connection with said contract.

That said proposed contract Exhibit A, in addition to [fol. 247] providing for a supplemental supply of water, contains provisions for the construction of a surface or pipeline distribution system for the distribution of the supplemental water within the boundaries of the Ivanhoe District, and in submitting the proposition to the qualified voters within said District as to the approval or disapproval of said proposed contract, there was represented to said voters, including by means of the notice of election, that the design and construction of said distribution system would provide a surface or pipeline distribution system for the delivery of water to each unit of not more than 160 acres of land for a total of 10,000 acres of land, at a cost to the District of not to exceed $1,589,807.00. Said amount to be repaid by the District in forty (40) equal annual payments without interest.

That the United States now claims that the United States is under no obligation under said contract herein sought to be validated to construct a complete distribution system to 10,000 acres of said land within said District or any material part thereof, for such sum of $1,589,807.00 and claims that the United States in the construction of said distribution system to said 10,000 acres of land in units of not more than 160 acres for all of said 10,000 acres of

land, may add to and charge in excess of said $1,589,807.00 by such amount and to such extent as the Secretary of Interior may from time to time determine, and without regard to the provisions of the contract herein sought to be validated. That said Secretary has now indicated that the additional costs considered by the Secretary to be the costs of such distribution system is, and will be, at least $686,193.00.

VI.

[fol. 248] That thereafter and pursuant to the provisions and requirements of Article 42 of said contract Exhibit A attached to said complaint, and pursuant to the terms and provisions of that certain resolution of the board of directors of Ivanhoe Irrigation District duly passed on September 7th, 1949, and attached as Exhibit D to the plaintiff's complaint, and pursuant to the provisions of Section 23225 of the Water Code of California and to the extent adopted therein, the provisions of Sections 22670-22684 of the Water Code of California, this proceeding was authorized and instituted by Ivanhoe Irrigation District to obtain a judicial examination, approval and confirmation of (1) all the proceedings had and taken for the organization of Ivanhoe Irrigation District as an irrigation district; (2) for such a determination of all the proceedings leading up to and including the claimed execution and delivery of said proposed contract, Exhibit A; (3) the validity of said contract Exhibit A, and of each and every term and provision thereof; and (4) the right and authority of the respective persons signing the same and the parties thereto to execute said proposed contract.

VII.

That the gross area contained within the boundaries of Ivanhoe Irrigation District is approximately 11,117 acres. That of this area approximately 9,968 acres is land that is suited for reclamation, cultivation and irrigation. That of said gross area approximately 8,865 acres had been reclaimed and developed and were in a high state of cultivation and had been made such by the development by the owners of said land of a system of irrigation for said

acreage. That said lands were served by a system of private pumps owned by the respective landowners, together [fol. 249] with local and private distribution systems for such pumped water to the respective lands. That a part of the said area was served by means of ditches and a supply of water brought to said land owned by said landowners and furnished through the facilities of a private ditch company. That the population within said Ivanhoe Irrigation District was at the time of the execution of said contract approximately 1,000 persons. That it was believed that by procuring the supplemental water supply in the amounts as provided for in said contract Exhibit A attached to said complaint, that the population within said area could be increased by approximately 150 persons. That it was believed that the reclaimable and irrigable acreage within said District by means of such supplemental supply could be increased from 8,865 to 9,968 acres. That under full development it was believed that the consumptive use of water for the irrigation of all of said properties would be approximately 24,000 acre feet per year for the 9,968 acres. That of this 24,000 approximate acre feet per annum of consumptive use, the need for supplemental water would be approximately 7,700 acre feet.

VIII.

That in said contract in these findings referred to as Exhibit A, for purposes of clarity, reference is hereby made to the fact that said contract provides for two things,—one, a supply of water to be brought from Friant Dam and through the Friant-Kern Canal as a part of the Central Valley Project to a delivery point on the boundaries of the plaintiff District, which phase of said contract relative to the delivery of such water is and will be in these findings referred to as the water delivery contract or water delivery features of the contract; two, that [fol. 250] in addition to providing for the delivery of water as just recited, said contract also contains provisions relative to the construction by the United States of a local pipeline or surface distribution system for the distributing within the boundaries of Ivanhoe Irrigation District the water to be delivered at the District's boundary.

That the distribution system features of the contract have been and will hereinafter be referred to as the distribution system or distribution system features of the contract.

IX.

That commencing in 1850 the State of California made studies throughout the State of California, including in particular in the Sacramento and San Joaquin Valleys, for the conservation of its water resources; the said studies continued throughout the years and there was developed by the State of California a State Water Plan. As a part of this Plan for the conservation of its water resources, the State of California made studies of all available dam sites for the storage and ultimate distribution for agricultural as well as other purposes, of its water resources. As a part of and in keeping with such endeavors and in order to have all waters that had not been appropriated and put to use available for such plans, the State of California in 1927 and following, authorized and caused the Director of Finance of the State of California to on behalf of the State of California and in furtherance of such development, file with the State Engineer, Division of Water Resources, Department of Public Works of the State of California (hereinafter in these Findings referred to as "State Engineer") applications to appropriate and put to use all of the unappropriated waters with the State of [fol. 251] California, and pursuant thereto, the Director of Finance of the State of California did file such applications on all of the major sources of water supply within the State. That included within the studies and the steps taken by the State of California were detailed studies and engineering reports with particular relation to the Sacramento and San Joaquin Valleys of California of a project that came to be known and is known as the "Central Valley Project of California". That the Central Valley Project of California, as planned by the State of California, includes the construction of dams, hydro-electric development, the storage of water, and the construction of canals for the distribution of water to areas within the Sacramento and San Joaquin Valleys of California, including the service of water from Friant Dam through the Friant-

Kern Canal to the identical lands included within the boundaries of Ivanhoe Irrigation District. That to carry out the studies and plans of the State of California, in 1933, through legislative action there was brought into being an agency of the State of California known and designated as "The Water Project Authority of the State of California". That said agency was given and still has, not only the right and power to, but the duty to, construct, operate and maintain the project, including the making of contracts with water users and the collection of rates, charges and revenues therefor, and to repay the costs of the project. That said Water Project Authority was authorized to issue and sell $170,000,000.00 in bonds to finance the construction and operation of said Central Valley Project. That in 1934, because of the then existing depression, said Water Project Authority of California, deeming it not advisable to sell said bonds at said time, made [fol. 252] application to the Federal Emergency Administration of Public Works for a loan and grant to the Water Project Authority of the State of California, said loan and grant to be utilized to construct and operate said Central Valley Project and to be repaid through revenues realized by said Water Project Authority of California from said Central Valley Project of California. That while this application was pending and in 1935, as a part of the relief program to create employment and aid in construction of public works, there was allocated by presidential order $20,000,000.00 for use in connection with the Central Valley Project of California. In March of 1936 a contract was entered into by and between the Water Project Authority of California and the Federal Government under the Emergency Relief Appropriation Act of 1935 of the United States, which contract provided, among other things, "in order for the accomplishment of the early construction and operation of the project in the most expeditious and economical manner, the Bureau of Reclamation and the Water Project Authority shall cooperate fully with each other in attaining such end", and "it is contemplated that at the earliest practicable date a contract will be entered into between the United States and the Water Project Authority providing for—

"(a) The operation and maintenance by the Authority of useful units of the project, upon presenting assurances of payment satisfactory to the United States of the costs thereof;

"(b) Appropriate payment by the Authority to the United States for expenditures in construction of the project;

"(c) The securing by the Authority of the appro- [fol. 253] priate contracts for disposal of facilities to be made available by the project."

X.

On March 13, 1937, and on November 8, 1937, supplemental contracts to said contract of March, 1936, were entered into by and between the Water Project Authority and the Federal Government containing (a), (b), and (c) above quoted, but the introductory recital in said supplemental contracts read: "It is contemplated that at the earliest practicable date, and *as soon as permitted by law*, a contract will be entered into between the United States and the Water Project Authority . . .". That the provisions relative to (a), (b), and (c) above quoted in said contract of March, 1936, and in contracts supplemental thereto have never been revoked.

XI.

Thereafter the Water Project Authority of the State of California and the agents and representatives of the State of California attempted to procure from the United States of America a contract or contracts whereby the State of California by and through the Water Project Authority of California could and would proceed with the making of contracts with irrigation districts and other agencies for the delivery of water from the Central Valley Project of California to the areas to be served and to enable the Water Project Authority of California to operate and maintain the useful units of said project and to repay to the United States the repayable costs of said Project. That any contract or contracts in connection there-

with and to that end were and have been refused by the United States, and the United States, through the Depart- [fol. 254] ment of Interior and the Bureau of Reclamation, has insisted that all contracts for the delivery of water or other service from the Central Valley Project, as it has been from time to time completed and/or is being constructed, should be made exclusively by and through the Bureau of Reclamation and Department of Interior of the United States and directly with irrigation districts or other local agencies within the boundaries of which the waters of the Project are to be used, and upon such terms and conditions as should be prescribed by the Bureau of Reclamation.

That although now and for several years past, the United States, acting by the Bureau of Reclamation, has maintained that numerous provisions of the Federal Reclamation laws, including the so-called 160-acre limitation, must, as a matter of Federal law, be applied to the Central Valley Project, the United States did not disclose or make known to the State of California or its representatives any intention so to apply such provisions, or any claim that such provisions were applicable thereto, until in or about the year 1941.

XII.

That among the applications made by the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, were the following applications duly filed in the office of the State Engineer to appropriate water from the Sacramento River and the San Joaquin River, to wit: application 5625, records of the State Engineer, Division of Water Resources, to appropriate water of the Sacramento River at Shasta Dam, filed July 30, 1927, to appropriate a diversion of 11,000 second feet constituting 3,190,000 acre feet per annum of storage [fol. 255] for power purposes; application 5626, records of the State Engineer, Division of Water Resources, filed July 30, 1927, to appropriate the waters of the Sacramento River at Shasta Dam to divert 8,000 second feet constituting 3,190,000 acre feet per annum for irrigation, do-

mestic use, saline, flood control and navigation purposes; application 9364, records of the State Engineer, Division of Water Resources, filed August 2, 1938, to appropriate the waters of the Sacramento River from Shasta Dam to divert 9,000 second feet constituting 3,000,000 acre feet per annum for irrigation purposes; application 9365, records of the State Engineer, Division of Water Resources, filed August 2, 1938, to appropriate waters of the Sacramento River at Shasta Dam to divert 7,000 second feet constituting 3,310,000 acre feet per annum for power purposes; application 5637 records of said Division filed July 30, 1927, to appropriate the waters of the San Joaquin River at Friant Dam to divert 4,500 second feet constituting 1,210,000 acre feet per annum for power purposes; application 5638 records of said Division to appropriate the waters of the San Joaquin River at Friant Dam to divert, 5,000 second feet constituting 1,210,000 acre feet per annum for irrigation, domestic, and flood control purposes; application No. 9369 records of said Division to appropriate the waters of the San Joaquin Rivert (sic) at Friant Dam to divert 2,000,000 acre feet per annum for irrigation, domestic use and flood control.

That the waters involved in these applications are necessary to enable the furnishing of a water supply from Friant Dam through the Friant-Kern Canal to the lands within the Ivanhoe Irrigation District, including the lands of the defendant McCracken. That the United States sought unconditional assignments from the Department of Finance [fol. 256] of the State of California to the United States of the aforesaid applications, which unconditional assignments were refused and conditional assignments were made providing that the waters involved within the assigned applications were to be used in furtherance of and as a part of the Central Valley Project of California and for the delivery to the lands to be benefited by said applications. That included within the designations contained in said applications and the maps and data filed in connection with the aforesaid applications was a description of the property to be served and benefited by said applications and that said description and descriptions included the identical land now contained within the Ivanhoe Irriga-

tion District and included the land of the defendant McCracken. That the water to be delivered from Friant Dam and through the Friant-Kern Canal under the provisions of said contract Exhibit A attached to said complaint is a part of the water involved in said applications to appropriate water, which applications were made, as aforesaid, by said Director of Finance and were conditionally assigned to the United States in trust for the use and benefit of the Central Valley Project and which water was designed and intended to be appropriated for delivery to the lands now comprising the area within the boundaries of Ivanhoe Irrigation District, as well as other lands within other irrigation districts and similar water agencies within the area to be served by said Project. That said applications are still pending and are in good standing and that proceedings are pending before the Division of Water Resources, Department of Public Works of the State of California, as to permits to be issued in connection therewith. That there is now being delivered by the United States to the Ivanhoe Irrigation District water from Friant Dam and through [fol. 257] the Friant-Kern Canal for use on the lands within the district, which said water is included in said applications and assignments. This water is now being beneficially used by the plaintiff District and the landowners therein.

That the application made to the State Engineer to appropriate unappropriated water created in the applicant in trust for the persons for whose benefit the application was made and in such beneficiaries, an incomplete, incepient (sic) and conditional right in the water applied for and which right the Court expressly finds to be, as applied to all parties and persons for whose benefit said applications were filed, including the landowners in the plaintiff District, a vested interest in real property.

That the United States has acquired in trust vested appropriative rights to the use of the waters of the San Joaquin River which are not subject to the jurisdiction of the State Engineer, but by far the greater portion of the water required for project purposes is subject to permits therefor to be issued by the State Engineer; that the United States now holds such applications, the more important having been acquired by assignment in trust from

the State Department of Finance as herein found, for water sufficient for the project purposes; that permits by the State of California for the use of said water have not as yet been issued; that these findings and conclusions are not intended to, nor shall they, in anywise interfere with, restrict, or limit the lawful discretion of the State Engineer in acting upon such applications, or in the issuance of permits and licenses pursuant thereto, or in conditioning the same in the public interest, but that it is intended that he should proceed to exercise the discretionary power vested in him without undue delay or injury to the water [fol. 258] users within the District.

That all applications to appropriate unappropriated waters of the Sacramento and San Joaquin rivers and their tributaries, or any thereof, duly filed with the Division of Water Resources, Department of Public Works of the State of California, and which continue in good standing on the records of said Division, which were made, acquired or now held by the United States of America, Bureau of Reclamation, with the objective of acquiring rights to the use of such water to be delivered through the works of the Central Valley Project for irrigation, whether such applications were made by said United States, or acquired from others, including the State of California, Department of Finance, are held by the United States as trustee for the beneficiaries of said Project; that said applications to appropriate the unappropriated waters of the Sacramento River were made and acquired by the United States in part to enable the delivery of water through project works in accordance with the obligation of the United States pursuant to said Exchange Contract as recited in these findings, and in order to enable the United States, in operating said Project, to utilize water of the San Joaquin River equivalent in quality and quantity to that imported from the delta of the Sacramento and San Joaquin Rivers, and derived in part from the Sacramento River; that the plaintiff Ivanhoe Irrigation District and its landowners are beneficiaries of said trust as herein found, including the right to require the United States to exercise due diligence in completing said applications and in particular, subject to the proper exercise of

discretion of said State Engineer in acting on said applications, to secure the issuance by said State Engineer to [fol. 259] the United States, of permits pursuant to said applications; that the United States has failed and neglected to complete the required procedure to secure permits and licenses. The application of said water to a beneficial use by plaintiff Ivanhoe Irrigation District and its landowners and water users vested an appropriative right appurtenant to all lands within said district to continue to receive and to beneficially use the appropriated water with priority as of the date of said applications, subject only to conditions lawfully imposed as authorized or required by the laws of the State of California.

XIII.

That the studies of the State of California relative to the conservation and use of the water resources of the State of California, as more particularly hereinbefore outlined, and the adoption of a State Water Plan by the State of California and in particular the preparation of the plans, designs and the planned construction of the works to be and constitute the Central Valley Project of California and the creation of the Water Project Authority as an entity and agency of the State of California for the purpose of planning, constructing, operating, maintaining and repaying the costs of said Central Valley Project of California and the construction of all works in connection therewith, including units added to the original planned Central Valley Project of California have been and were designed and planned as a permanent project. That the construction of the dams and canals for the storage and delivery of storage water within said Central Valley Project to the various areas to be benefited, including in particular the lands within the plaintiff District and including the plans for the construction of a distribution system within [fol. 260] said plaintiff District, each and all were planned and designed, constructed, and are being operated not as temporary works, but as permanent and perpetural (sic) works for the continued delivery of water to the lands within the plaintiff District (as well as other irrigation districts and like agencies within said Central Valley Project).

That the construction, operation and maintenance of works within the Central Valley Project of California by the United States, including the construction of distribution systems for the use of water by local districts, was authorized in 1937 by special act of Congress, as amended; that at all times subsequent thereto there have been and now are no irrigable public lands of the United States subject to reclamation by use of irrigation water from said Project; that the United States is not the owner of any lands within the service area of said Project upon which water can or will be applied to beneficial use; that said special acts, as amended, did not and do not include any provisions or in anywise provide for the application to said Project, or any part thereof, of any acreage limitation, as such term "acreage limitation" is used in these Findings.

That the provisions of said special act, as amended relative to reimbursement to the United States of the reimbursable cost of said Project relate only to the reimbursement of the United States in the manner provided by the Federal Reclamation Laws and were not intended to conflict with the State law or to deprive landowners within said Project of property or property rights.

XIV.

That by contract dated the 27th of July, 1939, by and [fol. 261] between the United States and the South San Joaquin and Kings River Canal and Irrigation Company, Inc., and other corporations commonly referred to as the "Exchange Contract", and by contract dated July 27, 1939, between the United States and Miller & Lux, Incorporated, and Gravelly Ford Canal corporations doing business in California, and by other comparable contracts, reference to which is made in paragraph (d) of Article 16 of the contract herein sought to be validated, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by the companies with whom said contracts were made, in and to the waters of the San Joaquin River and its tributaries and the United States by said "Exchange Contract" agreed to deliver to said contracting companies in lieu of and in exchange for their rights to certain waters of the San Joaquin River other and different waters from the

Sacramento River and its tributaries, which other and different waters were to be imported to the Mendota Pool by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Pool Canal. That the United States entered into all of said contracts herein referred to in order that waters of the San Joaquin River and its tributaries above Friant Dam could be stored in Friant Reservoir and diverted northerly through the Madera Canal and southerly through the Friant-Kern Canal for the irrigation of lands in the counties extending from Madera on the north to Kern on the south, and which lands are located generally on the easterly side of the San Joaquin Valley floor, including, among other areas, the lands within the plaintiff District (as well as other lands within other irrigation and similar districts within the service area in said easterly portion of said Valley). That [fol. 262] it was and is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir, sometimes known as Millerton Lake, and convey the same through the Friant-Kern Canal for the irrigation of the lands in the plaintiff District, and in particular to the lands of the defendant McCracken. That in the making of said contracts by the United States with said contracting companies and in the acquiring of such exchange rights and estoppels, the United States did not do so in connection with the serving of any property or lands of the United States. That said contracts were so made, designed and intended solely as a means of arranging an exchange of waters from the Secramento (sic) River to serve lands theretofore served by waters of the San Joaquin River and to enable the taking of waters from the San Joaquin River and in particular from Friant Dam to the lands for which said San Joaquin River waters had been appropriated, including the lands within plaintiff District. That the United States, in making said contracts and in acquiring such rights, did so wholly and solely in connection with said Central Valley Project of California and that any and all costs in connection therewith are and were charged by the United States to said Project as a part of said Project costs and that all such costs are and will be

treated as a part of such Project costs to be returned to the United States as in the manner of the return to the United States of its other returnable costs in connection with said Project. That any and all such rights and interests of the United States are held by the United States solely as trustee for the use and benefit of said Central Valley Project, including the plaintiff District and the lands of the defendant McCracken and that the use of [fol. 263] such rights and waters involved therein can be made only in connection with the operation of said Central Valley Project.

XV.

That the United States acting by and through the Department of Interior maintains and asserts that the Central Valley Project of California, as herein referred to, was authorized for construction by and through the Bureau of Reclamation in and by acts of Congress as follows: The Rivers and Harbors Act of 1937, the Rivers and Harbors Act of 1940, the Act of Congress approved October 14, 1949, and an Act of Congress approved September 26, 1950. That the United States, acting through the Secretary of the Interior and Bureau of Reclamation, has substantially completed the construction of said Project (with the exception of that portion thereof set forth in subsection 7 of paragraph XIX hereof) and is now operating and maintaining the usable, completed works of said Project.

XVI.

That the United States acting by and through the Department of Interior maintains and asserts that it is the sole and exclusive agency for the selling of water to Ivanhoe Irrigation District and other irrigation districts and similar agencies within the Project from Friant Dam and the Friant-Kern Canal. That through the Bureau of Reclamation of the Department of Interior of the United States the only contract or contracts which have been offered or which the United States is willing to make in connection therewith with Ivanhoe Irrigation District, or other irrigation districts and like agencies within the Project,

has been and is, as to plaintiff District, the contract Ex-
[fol. 264] hibit A attached to the complaint, and as to other irrigation and similar districts and agencies within the Project, contracts of the same import and effect. That said contract which is offered by the Bureau of Reclamation of the Department of Interior on behalf of the United States is one which the officials of the Department of Interior and the Bureau of Reclamation of the United States claim and contend is authorized and provided for by Section 9(e) of the Reclamation Project Act of 1939 of the United States; Act of August 4, 1939, Chapter 418, 53 Stats. 1184, 43 U. S. C. 485. In that connection it is claimed by the officers, agents and representatives of the Bureau of Reclamation, Department of Interior of the United States and the Secretary of Interior of the United States as follows:

(1) That under the authority of said Section 9(e) of said Reclamation Act of 1939 the contract Exhibit A attached to plaintiff's complaint, is a utility-type contract by which the United States may in perpetuity control and distribute the waters from Friant Dam and through the Friant-Kern Canal to the lands within Ivanhoe Irrigation District, and to other irrigation districts and like agencies and to lands therein within the Project, and that said contract is in no sense a repayment contract and is in no sense a contract under which Ivanhoe Irrigation District and/or the landowners within Ivanhoe Irrigation District are entitled to any credit upon repayable construction costs of Friant Dam or the Friant-Kern Canal or any of the works used or useful in the delivery of water to the Ivanhoe Irrigation District. That the contracts offered to other irrigation districts and like agencies within the Project are to be of the same force and effect.

(2) That said contract Exhibit A attached to the plain-
[fol. 265] tiff's complaint does not and can not give or recognize any right in the Ivanhoe Irrigation District and/or the landowners within Ivanhoe Irrigation District to any continued delivery of water and that any right to water under said contract is not appurtenant to any of the lands within Ivanhoe Irrigation District and is not perma-

nent and that the Government of the United States is entitled upon the termination of said contract to require re-negotiations of a contract for continued delivery of water from said source by said means upon such terms and conditions as the United States may then determine.

(3) That the United States is entitled to and may attach as a condition to the use of water within the boundaries of Ivanhoe Irrigation District, that water may not be served by Ivanhoe Irrigation District for industrial or domestic purposes and that the United States may dictate the amount of acreage which may be owned by any one person and that the United States may require all landowners within Ivanhoe Irrigation District to select from lands held, had, owned and used by them limited acreages and that if the landowner does not select the acreage he will retain, that it will require the board of directors of the Ivanhoe Irrigation District to make the selection for the landowner and that if the board of directors does not make the selection, that the Secretary of Interior will make the selection for and on behalf of the landowner and that unless the landowner agrees and consents to the sale of the excess land over and above the limited acreage at a price in which the landowner has no voice, that the landowner may not receive any water for that excess acreage and that he may not receive water for any of his land unless he has made the selection of the so-called "non-excess [fo]. 266]. land" that he will retain. That in the Ivanhoe Irrigation District the Bureau of Reclamation has notified landowners of the Bureau's present requirement to make such selection and to execute contracts with the United States for the sale, at the direction of the United States and at the price fixed by the United States, of the so-called "excess land", and has notified the landowners that they may not receive water for any of their lands except by compliance with these directions. That the defendant McCracken has been so notified in writing by the Bureau of Reclamation of said requirements and that said requirements are being and will be enforced by the United States.

(4) That the Reclamation Act of 1939 authorized and empowers the Secretary of Interior to apply such of the

terms and provisions of the reclamation laws of the United States as are unrepealed, commencing with the Reclamation Act of 1902, as said Secretary from time to time may determine relative in particular to those matters hereinafter referred to and recited.

XVII.

The Court finds that it is not true that the Reclamation Act of 1939 and/or Section 9(e) thereof, as passed and adopted by the Congress of the United States, was intended to or understood to change, or did in fact change, the reclamation laws of the United States with respect to the matter of the law requiring the use by the Reclamation Bureau of 40-year repayment contracts that would provide for the return to the United States within a period of 40 years, without interest, that portion of the capital construction costs allocable and alloecated (sic) to irrigation and to be repaid by the water users. The Court finds that the theory of the utility-type contract withholding and denying a permanent and appurtenant water right, re- [fol. 267] quiring re-negotiation and not providing for a credit upon construction costs of the major works, was not made known or presented to the said committees or the said Congress of the United States and can not be said, as a factual matter, to have been intended by Congress in the passage of said Reclamation Act of 1939, or any part thereof, and that in fact it was understood and intended that the passage of the Reclamation Act of 1939 and all parts thereof did not and would not in anywise conflict with or change the basic reclamation laws of the United States requiring and providing for repayment contracts repaying the properly allocable and allocated costs to irrigation and to be repaid by the water users within a period of forty years, plus a development period of not to exceed ten years.

XVIII.

That the Central Valley Project is a multiple-purpose project initially designed and planned by the State of California and functioning for the general purpose of

irrigating arid lands in the Great Central Valley of California and other purposes. That the Great Central Valley of California is the Valley which lies in the basin of the Sacramento and San Joaquin Rivers and their tributaries. That said Project contemplates the use in said Valley for irrigation, municipal, domestic, power and other beneficial purposes of the water of the Sacramento and San Joaquin Rivers and their tributaries. That said waters rise, flow and discharge into the Pacific Ocean wholly within the State of California. That there are no irrigable public lands of the United States within the service area of the said Central Valley Project in said Great Central Valley. That said Project was planned and generally designed by [fol. 268] the State of California; that the plans, purposes and features of said Project are substantially as set forth and described in Bulletins 25, 26 and 29 of the Division of Water Resources, Department of Public Works of the State of California, which bulletins constitute reports submitted by said Division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins and reports contained therein are official documents of the Executive Department of the State of California.

XIX.

That the Central Valley Project was primarily designed to provide and does and will provide a stabilizing source of supplemental water supply for irrigation and other purposes incidental thereto on a vast acreage of lands now under irrigation in the Great Central Valley of California, some of which said lands without such supplemental water supply would have inadequate sources of supply. That the construction, operation and maintenance and management of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California embracing several million acres of land comprising more than one-half of the cultivated agricultural lands of the State. That the major engineering features of said Project include:

(1) Shasta Dam and Reservoir and hydroelectric power plant and Keswich Dam and power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said Power Plants, and appurtenances thereto;

(2) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said [fol. 269] delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said delta to the Mendota Pool on the San Joaquin River;

(3) Contra Costa Canal, a canal leading from the Sacramento-San Joaquin Delta to the vicinity of Martinez;

(4) Friant Dam and Reservoir on the upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant Reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant Reservoir southerly to a point on Kern River near Bakersfield;

(7) Folsom Dam and Reservoir and hydroelectric power plant on the American River near the City of Folsom, with certain electric transmission lines leading from said power plant, and appurtenances thereto, and related works;

(8) Sly Park Development.

XX.

That by virtue of the facts and circumstances herein found, recited and existing, including said assignments of said applications, the State of California has become and is the trustor of an express trust; the United States has become and is the trustee of that trust; the landowners, including the landowners of the plaintiff District, have become and are beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contracts referred to in paragraph XIV of these Findings, including those referred to in the provisions of Article 16 (d) of the contract sought to be validated herein, and

[fol. 270] including similar and comparable contracts and by and through the assignments to which reference has herein been made as to said applications to appropriate water, are held by the United States as such trustee and as a part of the trust fund or res for the use and benefit of the plaintiff District as the representative of the landowners therein, in order to, among other things, preserve to such landowners the right to acquire permanent rights to the use of water from the works of said Project pursuant to the laws of the State of California and of the United States; that the United States does not have and will not own or have any right of ownership or title to any water of the State acquired or to be acquired for the purposes of said Project, other than as such trustee; that such trust status and relationship is hereby found to exist, and the effect of said contract, if it were validated, would be to create uncertainty and doubt as to those matters and thereby cast doubt upon the authority and jurisdiction of the authorities of the State of California to discharge their responsibilities under California law, and would deprive the State of California and the Water Project Authority of the State of California and the Division of Water Resources of the State of California of their rights, duties and responsibilities in the administration of the laws of the State of California and would deprive the plaintiff District and the landowners therein or (sic) property without due process and without compensation and would deprive all parties concerned of the right to be heard before the courts in the protection of their rights and interests.

XXI.

That the Secretary of Interior in constructing, operating and/or maintaining said project, is under mandate from [fol. 271] the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, in the acquiring of any right to the use of water to acquire the same pursuant to the laws of the State of California relating thereto, and in operating said Project, to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation, and that when

waters from the Project are delivered by the United States to a district, other than pursuant to a contract whereby said district seeks delivery of surplus project water to meet its temporary requirements, and such water is applied and beneficially used in the irrigation of district lands, the district and the landowners therein acquire a right in the water which is a vested interest in real property appurtenant to the lands irrigated in accordance with the laws of the State of California, limited only by continued beneficial use and such reasonable conditions as may be lawfully imposed by the State Engineer; and the Court finds that plaintiff district and the landowners therein are entitled to receive, and have received, delivery of project water from the United States, not as temporary surplus project water but as a continuous supply of project water, and that plaintiff District and the landowners therein have acquired a vested right in the water, and to the continued delivery of water from the Project for beneficial use on all district land, as an appurtenance to the lands irrigated, limited only by those conditions reasonably to be imposed in accordance with State law through the office of the State Engineer.

XXII.

That the State of California is one of the United States of America and appears in this proceeding in its sovereign, [fol. 272] governmental, and proprietary capacity as such State, in its own interest and for the protection of its own rights; also as parens patriae in the interests of and for the protection of all of its citizens, residents, landowners and water users, and its agency, the plaintiff District, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust hereinafter described, which trust relates to the use of water in the Central Valley Project herein mentioned; also as the owner of the corpus of the water to be used in and by the Central Valley Project and as the owner of the right of reversion of any rights to the use of such water which may be forfeited or otherwise terminated by non-use or otherwise; and as

trustee for the use and benefit of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project the appropriated waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which waters as commingled will be used for the purposes of said Project, including so-called "exchange waters" covered by the contracts heretofore made by the United States with the specified owners for the exchange of Sacramento River waters for waters of the San Joaquin River.

XXIII.

That the Water Project Authority of the State of California is a body politic and corporate, organized and existing under the laws of the State of California with the right, power and authority, among other things, to sue and be sued.

This is a proceeding in rem, binding upon all parties [fol. 273] and persons having, or claiming to have any interest in the subject matter of this proceeding.

XXIV.

That the defendant A. D. Edmonston is the duly qualified and acting State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California. That the Division of Water Resources is a legally constituted division of the Department of Public Works of the State of California and that the State Engineer of California is the Chief of the Division of Water Resources. That A. D. Edmonston, as such State Engineer and as Chief of the Division of Water Resources of said Department of Public Works of the State of California is appearing herein pursuant to leave of Court granted to take all appropriate action in this proceeding. That the Division of Water Resources aforesaid is the agency of the State of California to which application to appropriate waters of the Sacramento and San Joaquin Rivers, as hereinbefore recited, was made and before which are pending the applications for permits relative to the use of said waters in the plaintiff District and other similar districts within the Central Valley Project of California.

XXV.

The validity or invalidity of the contract marked Exhibit A attached to the plaintiff's complaint depends measurably upon whether the United States has the right to the water to be delivered by it pursuant to contract, or rights to the use thereof, of title or ownership therein; and in determining the validity or invalidity of said contract there must be found and adjudicated as to all of the interested parties [fol. 274] to this proceeding, including all parties appearing herein, their respective rights, powers, status, relationships and duties regarding the use and control of waters within the State of California involved within the Central Valley Project and in particular those involved in the contract which is the subject of this action; that such a determination and definition of the rights, powers, status, relationships and duties, of the parties hereto and the parties interested in the subject matter of the action is necessary to determine the incidence and effect of the purported contract thereon; that the correspondence between the Attorney General of the State of California and the Secretary of Interior, copies whereof are attached to the amended answer of the Attorney General in this proceeding does not create, and is immaterial to, any issue concerning the validity of the contract involved herein.

XXVI.

That said contract factually is ambiguous, indefinite, uncertain and lacking in mutuality, among other things, in that it fails to define, set forth or accomplish an agreement between the parties and would, if validated, preclude a future determination, except the exclusive and final determination of the Secretary of the Interior, of the rights, powers and privileges of the plaintiff District and the landowners therein relative to such matters as water rights, ultimate and final credit for payments made by the District and the landowners within the District upon the contract, manner and methods of assessment of lands within the District and the determination and redetermination from time to time by the Secretary of the Interior as to what terms and provisions of the Reclamation laws of the United States

and what laws of the State of California are to be applied [fol. 275] to and govern said contract and said plaintiff District and the landowners therein.

That the purported contract marked Exhibit "A" and before this Court for validation is indefinite and uncertain and is without sufficient separate terms and conditions as to constitute a contract, in that said contract fails to indicate and specify the provisions of the Federal Reclamation Law that are to be considered as a part of said contract, and fails to eliminate the Reclamation Laws of the United States and the provisions of said Reclamation Laws that do not apply to said contract, and said contract fails to set forth the Reclamation Laws of other laws of the United States that are to apply to the operation of the Central Valley Project.

XXVII.

That the contract herein sought to be validated does not set forth or define the relative rights and duties of the parties thereto and of the beneficiaries of said contract and the parties directly interested and to be bound by said contract, and if validated without definition or conditions, said contract would be interpreted and enforced as meaning and being entirely different from what said contract purports on its face to be. That it has been made an issue of fact herein, and the Court finds, that there are expressed plans, objectives, claims and interpretations of the Secretary of Interior as to said contract which the Secretary of Interior and the officers, agents and representatives of the Department of Interior and Bureau of Reclamation of the United States would and will claim to be a part of and inherent in said contract and which would and will be applied and enforced by said Secretary, Department and Bureau if said contract be validated, and this [fol. 276] upon the claim that validation gives binding and final judicial sanction to these expressed plans, objectives, claims and interpretations of the Secretary of Interior.

In this regard the Court finds that under the said alleged contract sought to be validated, the United States, through its Secretary of Interior, the Department of Interior and the Bureau of Reclamation thereof, will assert, enforce and put into effect the following:

(1) That with respect to the use of water in the Central Valley Project and in particular the use of water from the Central Valley Project in plaintiff District, no water therefrom may be used and no right to the use of water therefrom may be had or obtained, except from the United States, and then only upon such terms and conditions as shall be prescribed by the Secretary of Interior.

(2) That under the contract in question, as well as to other similar contracts with other irrigation district within the Central Valley Project, the plaintiff, and such other irrigation districts and/or the landowners therein, do not have and can not obtain and, in fact, will be denied with respect to the use of project water or water carried through project works, any permanent or appurtenant water right.

(3) That the use of water from the Central Valley Project, and in particular the water to be delivered to plaintiff District and other districts within the Central Valley Project, shall be governed exclusively by contracts made between the United States and plaintiff and other districts and that said contract herein sought to be validated and other similar contracts do not and will not give, and in fact do and will negative and deny, any permanent or appurtenant water right and that there is no right of renewal [fol. 277] of said contract upon its termination and that as to any renewal, if granted, it shall be upon such terms and conditions as dictated by the Secretary of Interior.

(4) That the contract in question, and other similar contracts with other irrigation districts within the Central Valley Project, are authorized and provided for under Section 9(e) of that Act of Congress known as the Reclamation Project Act of 1939, and, as so authorized and written, are not repayment contracts, but are so-called "utility-type" contracts which withhold and deny any permanent and appurtenant water right and which authorize the United States to operate within said project in perpetuity as a utility server of water. (This does not relate to distribution system matters in contract.)

(5) That said contract herein sought to be validated, and other similar contracts, (exclusive of local distribution sys-

tem matters) are not repayment contracts and do not provide for any credit to the District or landowners therein upon the repayable costs of the project allocable or allocated to irrigation and to be repaid by water users applicable to agriculture and that the United States may continue in perpetuity to impose and collect charges, (in addition to operation, maintenance, etc.) after the United States has recovered its full costs of the project allocable or allocated to irrigation and to be repaid by water users applicable to agriculture and otherwise. That the plaintiff District and/or its landowners are not entitled to an accounting on the costs of the project or any repayment credits.

(6) That there is no right of renewal of said contract at the end of 40 years, or any other termination of said contract.

[fol. 278] (7) That the Secretary of Interior is authorized and entitled to limit and define the acreage in any one ownership that may receive water within plaintiff District and to withhold and compel the District to withhold water from owners' lands within the District if land in excess of the indicated single ownership acreage is had by any single owner. That the Secretary of Interior is entitled by rule and regulation, as the sole and final determiner of controversies arising under the contract, to determine and provide for the application of rules, regulations and laws relative to residence, occupancy, acreage limitations and forfeiture of land titles to the United States for refusal to abide by alleged acreage controls, and to deny at the discretion of the Secretary of Interior releases of lands and areas being served from restraints and restrictions claimed to exist under reclamation law, such as relinquishment of claimed acreage limitations when allocable or allocated to irrigation and to be repaid by water users applicable to agriculture have been repaid in part or in whole.

(8) That there has been delegated to the Secretary of Interior of the United States by the Legislature of the State of California the right, power and privilege to from time to time, by rule and regulation of the Secretary of Interior and/or by further contract and/or agreement with the board of directors of the plaintiff District and other

milarly affected irrigation districts in California to, in ffect, legislate with respect to the rights of the plaintiff nd other such similar districts and/or the landowners ereof as to the use of water to be delivered to the plain- ff and said other districts from the Central Valley Proj- ct, with particular reference to the manner of levying fol. 279] assessments upon the lands within the plaintiff District and other similar districts; the manner and method f apportioni g and delivery of water to the landowners ithin the plaintiff and other similar districts and that here has been delegated to the Congress of the United tates by the Legislature of California the right, power and rivilege of by congressional legislation from time to time n the future changing, altering and amending the rights of he plaintiff District and the landowners therein and of the arties appearing and interested in this proceeding upon he basis that said delegated right, power and privilege is y said contract and contracts authorized and provided for nd are a part of the rights, powers and privileges of the ecretary of Interior and the Congress of the United States nder said contract without regard to the constitutional or ther unlawful delegation of such powers.

(9) That by virtue of the terms and provisions of said roposed contract Exhibit A, and in particular the provi- ions thereof relative to so-called surplus, seepage, or waste vaters, the plaintiff District and its board of directors will e deprived of the right, power and privilege of distribut- ng, delivering and disposing of the water which it has cquired under the terms of said contract as said District vould be entitled to do under California law, and that as o such purplus, (sic) seepage, and/or waste water, that itle thereto is by said contract vested in the United States o that the United States may control underground waters within said Project.

XXVIII.

That the contract herein sought to be validated in this roceeding does not provide for or recognize the right to fol. 280] acquire a perpetual and appurtenant water right o the use of water upon the part of the plaintiff District

and/or its landowners and does not provide any right of renewal at the end of 40 years, and, in fact, it is the expressed plan and objective of the Secretary of Interior to construe said contract as not giving or allowing a perpetual or appurtenant water right or any right of renewal, even though the waters in process of being appropriated for the benefit of the plaintiff District and the landowners therein be applied to beneficial use thereon.

That it is the expressed plan and objective of the Secretary of Interior to construe and enforce said contract as not providing any credit to the plaintiff District or the landowners within the plaintiff District of any construction cost component in the rates provided to be paid by the plaintiff District to the United States for said water delivered and to construe and enforce said contract as not being a repayment contract providing for the return to the United States treasury of a portion of the construction obligation of said Central Valley Project allocated to irrigation and assigned for return by the said District as provided by the reclamation laws, or to any unit or units of said Central Valley Project used or useful in serving water to the plaintiff District. That it is the expressed plan and objective of the Secretary of Interior to construe and enforce said contract as not being a repayment contract and as not requiring or providing for or allowing any credit on an appropriate share of the fixed charges taking anywise into consideration that part of the construction costs of the works used and useful in the delivery of water to the plaintiff District and which said costs are allocated or allocable to irrigation and to construe, enforce and apply [fol. 281] said contract as not entitling the plaintiff District or the landowners therein to any credit or credits upon construction costs allocable or allocated to irrigation.

XXIX.

It is the expressed plan and objective of the Secretary of Interior to interpret, construe, apply and enforce said contract, if validated, as being a so-called "utility-type" contract, to wit: a contract entitling the United States to keep and maintain the possession of all of the major works and canals of the Central Valley Project in perpetuity and to

deliver water in perpetuity from said Project to the plaintiff District and other irrigation districts and similar public agencies receiving water from said Project, without regard to the laws of the State of California and so as to enable the United States to in perpetuity dictate the terms and condictions (sic) for the delivery of water from said works in said Project and in particular to the plaintiff District, and in doing the foregoing, to deny to the plaintiff District and/or any landowners therein, or other similar districts and landowners therein, any permanent or appurtenant water right or right of renewal of the aforesaid contract.

XXX.

That it is the expressed plan and objective of the Secretary of Interior to interpret, construe, apply and enforce said contract with respect to the matter of limiting and controlling the delivery of water to the plaintiff District from said Project so as to limit the acreage to which water may be delivered to any individual landowner by applying from time to time and under rule and regulation of the Secretary of Interior, acreage and other limitations so as prevent the delivery of water by the Irrigation District to [fol. 282] landowners within the Irrigation District in any instance where a single man owns more than 160 acres within the Central Valley Project, or where a married man and wife own more than 320 acres within the Central Valley Project, or where a man or wife dies and the survivor becomes the owner of more than 160 acres within the Central Valley Project; that the Secretary of Interior contends that the Federal Reclamation Laws contain provisions purportedly authorizing the Secretary of the Interior to impose other limitations as to the use of water under the various provisions of the unrepealed reclamation laws, including provisions thereof requiring residence on or near the land to be served with water and requiring occupancy of the land by the landowner to be served with such water and requiring forfeiture to the United States for the failure or refusal of a landowner to observe the requirements of the Secretary of the Interior with respect to acreage limitations, residence and occupancy; that it is the ex-

[fol. 285] XXXIV.

That the contract herein sought to be validated, if validated and applied, as contended for by the Secretary of Interior and the United States of America, would take private property of the plaintiff District and the landowners therein without due process and without compensation therefor.

XXXV.

That the United States, acting by and through the Bureau of Reclamation of the Department of the Interior, as assignee of the applications to appropriate water herein found to be made by the Department of Finance of the State of California and assigned by said Department to the United States, and by reason of the trustee relationship of the United States relative thereto, is under a duty and obligation to perfect the applications to appropriate water made by the Department of Finance of the State of California and assigned to the United States as herein found, and to perfect the other filings and applications made for the benefit of the Central Valley Project held in the name of the United States, or any of the agencies thereof, so as to enable the State Engineer of the State of California in the exercise of his lawful discretion in accordance with and pursuant to State law to cause appropriate permits and licenses to be issued in connection with such appropriations of water for the use and benefit of the acreages to be served, including in particular the lands within Ivanhoe Irrigation District, and the water users and landowners therein; and that the United States has failed and neglected to perform this duty.

XXXVI.

[fol. 286] That it is true that the portion of the contract herein sought to be validated which relates to the delivery of water as distinguished from the construction of the local distribution system, does not contain any statement of the amount of the share of the construction costs of the Central Valley Project or of the works of the Central Valley Project used or useful in serving water to the plaintiff District and which are or will be required to be repaid to the

United States by the plaintiff District and that said contract does not contain any provisions or terms for crediting to the plaintiff District and/or the landowners therein of any of such costs as may be repaid by the plaintiff District and/or the landowners therein when paying $3.50 per acre foot for class 1 water and/or $1.50 per acre foot for class 2 water. That said contract with respect to the furnishing of water does not contain any provisions relative to consideration of that part of the costs of the Central Valley Project in relation to construction of works connected with water supply and which such costs have been allocated to irrigation. That said contract in that respect is indefinite and uncertain and ambiguous and purports to leave the matter of that part of the construction costs of works connected with water supply and allocated to irrigation to the discretion of the Secretary of Interior and to likewise leave to the discretion of the Secretary of Interior the application or non-application of credits in favor of the plaintiff District and/or the landowners as to that part of the construction costs or works connected with water supply and allocated to irrigation.

That as a matter of fact the Secretary of Interior did make and report to the President and the Congress of the United States a determination with respect to the Central Valley Project of California as follows: The estimated cost of the proposed construction of the Central Valley [fol. 287] Project of California (independent of the cost of construction of local distribution systems) was fixed at $384,314,000.00 made up of the following items: Irrigation, including Contra Costa distribution system and canal capacity for future water, $221,551,600.00; power $104,143,600.00; municipal water and industrial water, $9,091,800.00; navigation, $18,083,000.00; flood control, $31,444,000.00, total allocations $384,314,000.00. That the features of the Central Valley Project included within said costs were and are as follows: Shasta Dam and Reservoir, Shasta Power Plant, Keswick Dam and Reservoir, Keswick Power Plant, Delta Cross-channel, Contra Costa Canal System, Delta-Mendota Canal, Friant Dam and Reservoir, Madera Canal, Friant-Kern Canal, Delta Steam Electric Plant, Transmission System, Water Rights and miscellaneous, Contra Costa

Distribution System. That at said time the Secretary of Interior determined and estimated the costs of the major works of said Central Valley Project, which could and can be properly allocated to irrigation and probably be repaid by the water users, and determined that of the amount aforesaid allocated to irrigation, the farmers should repay and it would be within their ability to repay a sum not exceeding $3.50 per acre foot for class 1 water and a sum not exceeding $1.50 per acre foot for class 2 water and that the total burden to be borne by the farmer for irrigation water delivered canal-side or riverbank-side, including expenses of operation, maintenance and replacement, should not exceed $58,545,475.00 (including $3,074,600.00 for Contra Costa Distribution System). The balance of the costs allocated to irrigation were allocated to be repaid from power revenues, i. e., that is, at said time 27 percent of the cost allocated to irrigation was to be repaid by the farmer and 73 percent of the costs allocated to irrigation was to [fol. 288] be repaid from power revenues and by municipal and industrial water users. The amounts allocated to power were to be repaid by power and the amounts allocated to municipal and industrial water users were to be repaid by such users and the amounts allocated to flood control and navigation were to be borne by the Federal Government as non-reimbursable items.

That the Secretary of Interior and the Congress of the United States did accept said allocations and determinations and said amounts have been fixed as the maximum amounts to be paid by the irrigation water users within said Project for reimbursement to the United States of its properly reimbursable costs allocated to irrigation and to be repaid by the water users. That the plaintiff District and the landowners within the plaintiff District are entitled to have water delivered from said Central Valley Project to said plaintiff District within the framework of said allocated costs and at a charge not to exceed $3.50 per acre foot for class 1 water and $1.50 per acre foot for class 2 water, which payments, after being credited upon reasonable and necessary operating, maintenance, and replacement costs are required to be applied to the plaintiff District's portion of the necessary and reasonable construction costs of the works of the Central Valley Project used or

useful in delivering water to the plaintiff District and when said reasonable and necessary construction costs have been so paid, the plaintiff District is entitled to be free of further construction cost charges and plaintiff District and landowners within the plaintiff District are entitled to an accounting upon the reasonable and necessary construction, operation, maintenance and replacement costs and for the credits to which plaintiff District and the landowners therein are entitled hereunder.

[fol. 289]

XXXVII.

That said contract, Exhibit A, if validated would require and the Secretary of Interior would so apply and enforce said contract, as requiring plaintiff District to assess all lands within the boundaries of said District to pay its obligation to the United States, as well as other District costs, and the lands of the defendant McCracken herein with the other landowners of the District are and would be liable for all such costs and at the same time said contract would be by the Secretary and said plaintiff District enforced as depriving said landowners, notwithstanding such assessments, of their ordinary rights to water as provided by irrigation district law within the State of California, thereby depriving the defendant McCracken and other landowners within the plaintiff District of their property without due process and without compensation.

XXXVIII.

That the defendant Courtney McCracken is now and was at all times herein mentioned and for many years prior hereto has been the owner of 309 acres of land within Ivanhoe Irrigation District. That said defendant has reclaimed and put into a high state of cultivation and production all of his said acreage. That said defendant's land is supplied with water by pumping from wells and through pipelines in a system installed by said defendant and from a water supply owned by said defendant to serve defendant's land from a canal system which is known as the "Wutchunna (sic) Water Company" by virtue of stock ownership by said defendant in said Company and from return and seepage

flow water from higher lands reaching defendant's land and to which defendant is entitled and of which he is the owner by use and right: That the defendant's land within the [fol. 290] District is described as follows: The NW¼ of Section 30, Township 17 South, Range 26 East, M. D. B. & M., comprising 152 acres, more or less, and the NE¼ of Section 5, Township 17 South, Range 25 East, M. D. B. & M., comprising 157 acres, more or less. That 125 acres of said land is improved to grape vineyard and young orange orchard; 160 acres is devoted to annual crops, including vegetables, truck crops and grain, and about 24 acres of said land is hillside pasture land, which said land, except said hillside pasture, is well levefed and readily irrigated from defendant McCracken's own irrigation system and is fertile and capable of producing bountiful crops; that said land has been reclaimed and developed and is being farmed as a unit by means of a unified irrigation system of pumps and surface deliveries and its highest and best use is that of being farmed as a unit.

XXXIX.

That the defendant McCracken protested in writing to the board of supervisors of the County of Tulare against the inclusion of defendant's land or any thereof within the Ivanhoe Irrigation District and said lands were included over his written protest and objection. That since the organization of Ivanhoe Irrigation District the defendant has suggested to the board of directors of Ivanhoe Irrigation District the exclusion of his land from said District, which has been declined.

XL.

That the defendant McCracken has never consented to said contract or the terms or conditions thereof and in particular the provisions and effect thereof herein referred to. That said defendant McCracken was not permitted to vote against the approval of said contract by the District for [fol. 291] the reason that he was not an elector within said District, not being a resident thereof.

XLI.

That the defendant McCracken is the owner of additional lands in other areas within the Central Valley Project, his said holdings in that regard being as follows: The N½ of the NW¼ of the SW¼ and the S½ of the SE¼ of the SW¼ and the E½ of the NW¼ of the NW¼ of Section 33, Township 23 South, Range 26 East, M. D. B. & M., comprising 60 acres, more or less, situated in the Delano-Earlimart Irrigation District, which lands will be served by water from Friant Dam and through the Friant-Kern Canal. That the defendant McCracken is also the owner of a portion of Lot 53 of Mountain View Citrus Tract No. 1, containing 3 acres, more or less, situated in the Orange Cove Irrigation District, which said land is within the Central Valley Project of California and will be served by Project water therefrom.

XLII.

That the defendant McCracken has been advised by the Bureau of Reclamation of the United States, Department of Interior, that in order to obtain any water for his said lands under said contract he will be obligated to sell, or authorize the Secretary of Interior by a recordable contract between the defendant McCracken and the United States, all of his lands in excess of 160 acres and to designate his land not in excess of 160 acres upon which he desires to obtain water, and that without taking such action he will not be delivered any water by the District. That the defendant McCracken does not desire to sell or authorize anyone to sell his lands in excess of 160 acres, nor to designate any 160 acres upon which water shall be delivered [fol. 292] as non-excess land.

XLIII.

That this defendant McCracken is an unmarried man; that he resides near the City of Woodlake, County of Tulare, State of California.

XLIV.

That the lands of the defendant McCracken within the plaintiff District ever since the initial organization of the District have annually been assessed and McCracken has annually paid the annual assessments thereon. That said assessments have annually been levied for the purpose of providing funds to the plaintiff District to meet the orginary (sic) operation and maintenance funds of the District and also to build up and obtain the funds in advance that are called for to be paid by the terms of the contract in question for the advance payment of water annually in advance and to provide funds to meet the annual payments in advance of the due date thereof so as to provide funds for the annual payments upon the distribution system. That the defendant McCracken has paid all such sums but is now being deprived of water for his lands from the District system because of his failure and refusal to select his non-excess land and/or to execute the so-called "recordable contract".

XLV.

The Court finds that with respect to the so-called "acreage limitations" contained in Articles 34, 35 and 36 of said proposed contract, said provisions and each and all of the same relative to the restrictions upon the delivery of water to the so-called "excess lands" and the limitation of acreage in one ownership as in said contract provided are impossible of application, use and/or enforcement and that [fol. 293] the use and/or application and/or enforcement of such provisions is unworkable, impracticable, arbitrary and amounts to the taking of property without due process and without compensation.

XLVI.

That it is true that the provisions of Article 32 of said purported contract herein sought to be validated, if validated, would constitute an unlawful delegation of the power of the board of directors of Ivanhoe Irrigation District, to the United States and to the Secretary of Interior. That it is true that the failure of said contract to designate the

federal reclamation laws to be applied and the federal reclamation laws not to be applicable to said contract and the placing of the Bureau of Reclamation, the Department of Interior and the Secretary of Interior in the position to designate which of said federal reclamation laws are applicable and are not applicable within said contract constitutes an unlawful delegation of the power of the board of directors of Ivanhoe Irrigation District, to the United States and its officers and agents.

XLVII.

That it is true that the sole and entire operations of Ivanhoe Irrigation District are and will be to receive water through the Friant-Kern Canal from the Friant Dam and to distribute such water through the distribution system provided for in said contract and that said District will have no other or additional system or method of operating or for the service of water to the lands within the District. That the provisions of said contract relative to acreage limitations and restrictions upon the delivery of water to the lands within said District would, if validated, constitute an unlawful taking of property without due process and [fol. 294] without compensation and an arbitrary and unwarranted discrimination and unlawful restraint and restriction upon rights of sale, inheritance and testamentary disposition, as well as other property rights.

XLVIII.

That with respect to the portion of the contract having to do with the construction of the distribution system as distinguished from the delivery of water, it is hereby found that said contract is indefinite, uncertain, and lacking in mutuality in that, among other things, the United States purports to agree to construct a local distribution system within the District to conduct and furnish water to the whole of 10,000 acres of irrigable land within said District so that each unit within said 10,000 acres of land comprising not more than 160 acres of land shall have available to each 160 acres of land water from the local distribution system, all at a cost of not to exceed $1,589,807.00. That

pressed plan and objective of the Secretary of the Interior to require a landowner, as a prerequisite to obtaining any water for any of his land within the District to "voluntarily" select the 160 acres if single, or the 320 acres if married, which he will retain from his land holdings in excess thereof, and to refuse and prevent the delivery of water to lands held by a single person in any one ownership in excess of 160 acres, or if married, in excess of 320 acres, until and unless said landowner "voluntarily" signs a recordable contract agreeing to sell the so-called "excess acreage" at a price to be fixed by the Secretary of the Interior, without regard to the availability of water for said land, although enforcing and requiring the Irrigation District to assess all land owned by the individual landowner [fol. 283] within the District as in the case of the assessment of so-called "non-excess lands", and of refusing and preventing the delivery of water to any land within the District in the event that the landowner shall have failed, neglected or refused, or be unable to pay, an annual assessment levied by the District on his said lands, although the landowner may have paid all other charges required by the District for the delivery of water, and to apply provisions of the reclamation law claimed to authorize and entitle the Secretary of Interior to fix the acreage which may be owned by any one person to that area or acreage which the Secretary may deem sufficient for a family-size farm, although less than 160 acres.

XXXI.

That the contract in question contains no statement, criteria, yardstick or requirement for the payment of the maximum amount of money to be payable to the United States for construction costs for the major works used or useful in connection with the Central Valley Project for the delivery of water to the plaintiff District and that the election notice relative to the election held by the plaintiff District for the approval or disapproval of the contract in question does not contain a statement of the maximum amount of money to be payable to the United States for construction purposes relative to any of the major works

of the Central Valley Project used or useful to the delivery of water from said Project to the plaintiff District.

XXXII.

That the Secretary of the Interior contends that the Federal Reclamation Laws contain provisions purportedly authorizing the Secretary of the Interior, under rule and regulation of the Secretary of Interior to be made from time to time to: (1) regulate and require crop practices [fol. 284] within the plaintiff District to be approved by the Secretary; (2) regulate and limit the size of farm units within the plaintiff District to not less than 10 or more than 160 acres; (3) require residence of the landowner upon his land or occupancy thereof by him within the plaintiff District; (4) limit delivery of water to farm units smaller than 160 acres within the plaintiff District; (5) determine the irrigability of land within the plaintiff District, and to otherwise regulate and direct operations within the plaintiff District by the plaintiff District and the landowners therein under the guise of procuring and obtaining the solvency of said Project, all of which would be and are without authority or warrant in either federal or state law and in violation of the rights and interests of the landowners within Ivanhoe Irrigation District and would amount to the taking of property without due process and without compensation.

XXXIII.

That the Water Project Authority of the State of California has made no contract with the United States or any agency thereof by the terms of which the United States is given the possession of said Central Valley Project or the right to make any contract or contracts with individual irrigation districts to be served within said project and that the only contract existing between the Water Project Authority of California and the United States relative to the construction, use, and operation of said Central Valley Project and/or the collection of revenues therefrom and the application of the same to the costs of said Project is as contained im (sic) that certain contract as set forth in paragraph X of these Findings.

XXIII

The provision of said Irrigation District Federal Cooperation Law (State Water Code, Section 23197) authorizing the inclusion of a contractual provision for the delivery and distribution of water under Acts of Congress and the rules and regulations established thereunder, authorizes such delivery and distribution only under acts, rules and regulations as are consistent with generally-applicable State law, and also only under valid Federal statutes, rules and regulations. Under the Constitution of the State of California, and particularly Article XIV thereof, and under the Constitution of the United States and particularly the Tenth Amendment thereto, and under Section 8 of the Reclamation Act of 1902, the United States may not validly impose conditions on the delivery and distribution of water which are inconsistent with State law.

XXIV

Properly construed, the Reclamation Act of 1902, as amended and other Federal laws, do not permit the United States, acting by the Bureau of Reclamation or otherwise, to impose or become a party to a contract containing the provisions and of the character set forth above.

XXV

The contract of September 23, 1949, is invalid and unenforceable for the further reason that the Secretary of the [fol. 310] Interior, pursuant to rule and regulation, may in relation thereto apply numerous unrepealed provisions of the Act of Congress of June 17, 1902, and acts amendatory thereof or supplementary thereto, all collectively styled the Federal Reclamation laws, and generally referred to in the contract as the basis thereof; and that the application to the contract of many of such provisions would adversely and materially affect the contract and the rights of the District and the landowners thereunder.

XXVI

In addition, the contract is in violation of Federal Law in the following particulars:

A. Part A of the contract purports to be a utility contract for the sale of project water, thereby implying that the United States is the owner of said water in violation of Section 8 of the Reclamation Act of June 17, 1902, which provides that the Secretary of the Interior in carrying out the provisions of the act shall proceed in conformity with the laws of the States or Territories relating to the control, appropriation, use or distribution of water in irrigation, or any vested right acquired thereunder.

B. Part A of the contract fails to comply with the repayment provisions of Federal Reclamation laws in not stating the total or any amount to be repaid by the District and its landowners of that portion of the reimbursable costs of the Project allocated to irrigation and assigned for repayment by the water users; and the contract fails to specifically credit any part of the annual rates for water to the repayment of the District's obligation for project construction costs.

C. Part A of the contract is in negation of and does not [fol. 311] afford to the District and its landowners the opportunity to acquire a right to the permanent delivery of project water appurtenant to the land irrigated and all intendments of the contract are that at the end of 40 years no project water will be delivered to the District except in the discretion of the Secretary of the Interior.

D. The provisions of Sections 34, 35 and 36 of the contract relating to excess lands are in violation of Section 8 of the Reclamation Act of June 17, 1902, in that such limitations on the acreage to which water may be delivered is in violation of the laws of the State of California.

XXVII.

Further with respect to Federal law, the contract of September 23, 1949, by its terms and provisions is unenforceable for the reason that it is indefinite, uncertain, misleading and lacking in mutuality regarding the relationship of the parties toward each other with respect to project water and the relative rights and duties of the respective parties in connection therewith, and for the

said contract purports to provide for the construction of a complete distribution system for not to exceed said specified sum of money, which sum, without interest, is to be repaid in 40 equal annual payments, together with additional costs of operation and maintenance of said distribution system. That as elsewhere hereinbefore found, said contract was presented by the United States to the plaintiff District as providing for said completed distribution system at not to exceed said costs and in the notice of election submitting the said proposition to the voters it was specifically represented that the distribution system provision of said contract provided for a system for the delivery of water to each unit of land within said District for a total of 10,000 acres at a cost not to exceed $1,589,807.00. That because of the ambiguity in said contract it was and is now [fol. 295] contended by the United States, and now by the plaintiff District, notwithstanding its representation to the landowners in said notice of election, that the United States is authorized to charge and that the District will be required to pay in addition to said sum of $1,589,807.00 the principal sum of approximately $686,193.00 as additional costs of the construction of said distribution system. It is found that said contract by virtue of said ambiguities and said interpretation on the part of the United States does not contain a statement of the maximum construction costs for said distribution system and that the election notice did not and does not contain such maximum construction costs to be paid to the United States.

WHEREFORE, AND AS CONCLUSIONS OF LAW:

It is determined by the Court that:

I

Under the Constitution of the State of California, and in particular Article XIV, Section 3 thereof, and by the law of the State of California, this State, as sovereign, is vested with title to, ownership and control of all water within the State for and on behalf of the People of the State; it is the policy of this State that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable; appropriation of water may be made only

for a beneficial use, in accordance with State law, and then only for the duration of such beneficial use; and when such use ceases, the right thereto is forfeited to the State, and the right to the use thereof may again be acquired in the manner prescribed by State law; and the right to the use of water for irrigation shall be appurtenant to the land [fol. 296] irrigated, such right being a form of real property. Under the Constitution of the United States, and in particular the Tenth Amendment thereto, no Federal enactment, rule or regulation may validly override the said provisions and requirements of the State Constitution and law. The Congress of the United States has explicitly so recognized in the Federal Reclamation Act of 1902, Section 8, and other legislation.

II

The United States is not the owner of the water supplied and to be supplied from the Central Valley Project and which is the subject matter of its contract with the District. The interest of the United States in such water is limited in all respects by the law of this State ("law" being hereinafter used to include, unless otherwise indicated, the Constitution, statutes, rules and regulations, and court and administrative decisions of this State). As a storer and carrier of the water delivered from the Central Valley Project, the United States, to the extent that such water may be available, is obligated to deliver such water, to all beneficiaries of said Project within the Sacramento and San Joaquin Valleys, including the plaintiff District and the landowners therein. The United States is obligated to acquire from the State of California, acting through the State Engineer, permits for the use of water sufficient for the purposes of the Central Valley Project, and the use which the United States may make of such water is limited by the condtions (sic) which the State Engineer may impose, under State law relating to the appropriation of water, in any permits which may be issued to the United States for purposes of the Central Valley Project. That nothing contained in these findings and conclusions is intended to or shall in any wise, interfere with, restrict or limit the lawful [fol. 297] discretion of the State Engineer in acting upon

such applications, and in the issuance of permits and licenses pursuant thereto, and in conditioning the same in the public interest.

III

The Ivanhoe Irrigation District is lawfully organized and existing pursuant to the laws of the State of California, but it has the capacity to contract with the Federal Governmet (sic) only to the extent permitted by State law, and any such contract may be validated only if it is consistent with the State law.

IV

In order for the United States to carry out the purposes of the Central Valley Project, particularly the delivery of water therefrom to porject (sic) beneficiaries, including plaintiff District and its landowners, it was and is desirable and expedient that the United States acquire from the State of California the applications to appropriate unappropriated water referred to in Findings X and XII, and also to acquire other applications and said appropriative and other rights to water referred to in Finding XIV, and to perfect all such applications by securing permits pursuant to the laws of the State of California, for the use of all such water by said project beneficiaries, including the plaintiff District and the landowners therein. All rights to the use of water heretofore acquired by the United States for purposes of the Central Valley Project, as well as all rights to the use of water in process of acquisition and to be acquired for such purposes, are held by it in trust for the beneficiaries of said project, including plaintiff District and its landowners, all of whom have a present, vested right to the faithful fulfillment and execution of said [fol. 298] trust. That for the last several years, water has been delivered by the United States Bureau of Reclamation to the plaintiff District for the irrigation of lands within the District, and subject to the laws of the State of California and the discretionary powers of the State Engineer in issuing permits and licenses, said District and its landowners have acquired rights to the use of the appropriated water which rights are vested rights to the use

of said water on said lands, relating back to the date of the filing of the applications to appropriate by the Director of Finance of the State of California, and which rights are appurtenant to said lands, and limited only by conditions lawfully imposed pursuant to the laws of the State of California.

V

Any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are held in trust and dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners; and such water is required to be delivered to such lands for use thereon and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with State law, and under the burden of repayment to the United States of the reasonable charges for storing and transporting the appropriated water as elsewhere herein set forth.

VI

The State Engineer of the State of California, in accordance with the law of this State, is Chief of the Division of Water Resources, and in his official capacity as State Engineer is authorized and directed by State law to [fol. 299] pass upon all applications to appropriate water and in his lawful discretion to grant or to deny the same, and if granted to issue permits and licenses thereon in accordance with State law. Said State Engineer is required to insert in all such permits and licenses certain terms and conditions concerning the use of water thereunder, and in addition thereto is authorized to include therein terms and conditions which in his judgment are in the public interest relative to the use of water thereunder; and said State Engineer is also authorized to maintain actions to enjoin in appropriate proceedings any waste or unlawful use of water. If and when such permits are issued to the United States pursuant to said applications to appropriate unappropriated waters for the purposes of said project as herein

set forth, the United States will continue to hold such rights recognized thereby solely as trustee, and the beneficial title to such waters will vest in the landowners within the area of said project including those within the plaintiff District.

The owners of any and all lands within the Ivanhoe Irrigation District are entitled to equal rights, without discrimination, to receive water from such project and to apply the same upon their lands, subject only to conditions lawfully imposed in accordance with State law and the payment of charges sufficient to return to the United States its due proportion of the reimbursable and returnable costs of said project.

VII.

The Secretary of the Interior in constructing, operating and maintaining the Central Valley Project was at all times herein subsequent to the initiation of construction of said project by the United States, and now is, under mandate from the Congress of the United States to proceed in ac- [fol. 300] cordance with the laws of the State of California in acquiring rights to the use of water for purposes of said project and to hold and retain such applications, rights and interests not for its own use and benefit but for the use and benefit of the beneficiaries of said Central Valley Project, including plaintiff District and the landowners therein. The true right, title, and interest and ownership of all rights to the use of water acquired or to be acquired by the United States for purposes of said project, immediately upon the acquisition of such rights, gave and do give rise to a resulting trust, with the State of California, as the trustor, the United States, acting through the Secretary of the Interior and the United States Bureau of Reclamation, as trustee, and the landowners contemplated to be served with water by means of such project, including the landowners in plaintiff District as the beneficiaries of such trust; and the United States as trustee for all project beneficiaries has the duty and obligation to perfect its applications to appropriate water in accordance with State law which it has failed and neglected to do, in violation of its trust.

VIII.

The project as authorized, operated and maintained by the United States is a Federal assistance program, and the Secretary of the Interior in expending Federal funds for its construction, operation and maintenance, has so done and is doing so subject to ultimate appropriate repayment by the state, or local districts and agencies thereof, of the reimbursable costs of the project in accordance with the Federal Reclamation laws.

IX.

[fol. 301] The United States has the right, duty and obligation to recover, in accordance with the Federal Reclamation laws, that portion of the reimbursable project construction costs allocated to irrigation and assigned for repayment by the water users, and the District and all landowners therein, including the defendant McCracken, are obligated to pay a proportionate share of the cost of delivery of project water, and a proportionate share of the project construction costs, and in the payments made for such purposes are entitled to credit for that portion of payments which should appropriately be applied to the repayment of project construction costs.

X.

The District and the landowners therein upon the repayment of a proportionate share of the project construction costs are entitled, subject to compliance with State law, including conditions which may be imposed by the State Engineer in permits and licenses to appropriate water, to the continued delivery of project water by the United States as a right appurtenant to all of the District lands at such rates only as may be required to cover the District's proportionate share of costs of operation and maintenance.

XI.

The directors of the District in the management of the affairs thereof, and in the delivery of water made available by the project to the landowners therein, are governed by

the laws of the State of California relating to irrigation districts.

XII.

The District is an organization created and governed by [fol. 302] and for the electors thereof and bears a trust relationship to the landowners therein and in carrying out such trust is obligated by State law relating to irrigation districts, to deliver water received by it from said Central Valley Project to each parcel of land within the District regardless of size thereof, in the proportion that the District assessment on each parcel bears to the entire District assessment on all lands.

XIII.

In dealing with irrigation districts and other users of project water for irrigation, the Legislature of this State may not, consistent with the California Constitution, and particularly Article IV thereof, delegate to Congress the power to legislate relative to the use of such water in contravention of State law, nor authorize the Secretary of the Interior to enforce Federal law relative to the use of project water in contravention of State law.

XIV.

Subject to the rights of the State of California and the Water Project Authority of the State of California, as recited and found in paragraph X of the Findings herein, the United States and the plaintiff District may lawfully enter into a contract for the delivery of water and repayment by said District to the United States of that portion of the Project costs allocated to irrigation and assigned for repayment by the water users, and found by the Secretary of the Interior to be within the ability of the water users to repay. (The remainder of such costs allocated to irrigation to be repaid from power and other revenues.) Said contract may provide for an annual charge by the United States to the plaintiff District, including construc- [fol. 303] tion charges, operation, maintenance and overhead charges on the basis of a sum not to exceed $3.50 per

acre foot for class 1 water and a sum not to exceed $1.50 per acre foot for class 2 water, said sums having been determined to be the maximum charge within the ability of the water users to repay. Such contract must provide for a credit for the payments made by the plaintiff District upon such charges and provide that when such charges have been paid in full no further construction charges shall be collectible from the plaintiff ~~District or landowners~~ therein. The contract may not be the so-called "utility-type", limited term contract contended for by the Secretary of Interior as hereinbefore found, particularly in paragraphs XVI, XVII, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI and XXXII of the Findings of Fact herein.

XV.

The United States may not, by virtue of its physical possession and ownership of the dams, reservoirs and main canals constituting the major works of said Central Valley Project, or by virtue of the possession of any other works necessary or useful in the delivery of stored waters of the Central Valley Project, withhold, waste, or otherwise prevent the application to beneficial use of Central Valley Project waters, but is obligated to conform to the laws of the State of California relative to the control, appropriation, use and distribution of the waters of the Central Valley Project, and in that connection is required to permit such water to be put to beneficial use in accordance with the laws of the State of California and to recognize any and all vested rights. The United States is and shall be subject to the jurisdiction and direction of the State Engineer of the State of California as the executive officer [fol. 304] of the Division of Water Resources of the Department of Public Works of the State of California as prescribed by the laws of said State in respect to acquisition of rights to the use of water by appropriation, and respecting the use of such water, and that any and all rights to the use of water acquired or to be acquired by the United States for purposes of said Project are dedicated to carrying out the purposes and objects of said Project, including the delivery of said water to plaintiff District and its landowners, and such water is and will be required

to be delivered to such lands as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with State law, and burdened only with the payment to the United States of the reasonable and appropriate charges in repayment of its reasonable and necessary construction, operation, maintenance and replacement costs.

XVI

The plaintiff District and the landowners therein are entitled, subject to the rights and interests of the State of California and its agencies, as recited and found in paragraph X of the Findings herein, to a contract for the delivery of water by the United States to all lands within the plaintiff District, which contract shall recognize and provide for a permanent and appurtenant water right, subject only to continued beneficial use and a fixed maximum charge to be paid by the plaintiff District for the plaintiff's share of the construction costs of the major works of the Central Valley Project used or useful in the delivering of water to the plaintiff District, as such costs have been allocated to irrigation and assigned for repayment by the water users within their ability to repay same, and in which contract a credit to the District upon such [fol. 305] costs and a manner and method of accounting for such credit is provided for, and from which contract the features of the present contract herein sought to be validated which are herein found and concluded to be illegal and objectionable, including said acreage limitations, are eliminated.

XVII

It must be presumed, and is found and concluded, to have been determined by the Secretary of the Interior, that to the extent water may be available to the United States for such purposes, the plaintiff District and its landowners, subject to the discretionary powers of the State Engineer in issuing permits and licenses to appropriate water as herein found and concluded, are entitled each year, under an appropriate contract, to not less than the quantities of Class 1 and Class 2 water as specified in Part A of the pur-

ported contract; and pursuant to the same presumption, finding and conclusion, that the charges specified in Part A of the purported contract contain a component for the return by plaintiff District of some part of its proportionate share of Project construction costs, and that such charges, pursuant to an appropriate contract, are reasonable and within the ability of plaintiff District and its landowners and are adequate to repay to the United States, each year, an appropriate share of necessary construction, operation and maintenance costs.

XVIII

The following provisions of the said contract of September 23, 1949, are invalid and unenforceable because they conflict with State law, including in particular the State Constitution, Article XIV, Section 3, and the State Water [fol. 306] Code, Sections 22077, 22250, 22259, 26700-26993.

A. Article 26 of the contract, purporting to condition the delivery of water upon the payment of void assessments.

B. Article 28 of the contract, purporting to impose a penalty unknown to California law with respect to land which is in default in payments to the District although the latter is not in default in its payments to the United States.

C. Article 12(b) of the contract, purporting to forbid the District from disposing of surplus water outside the District.

D. Article 15(c) of the contract, purporting to reserve to the United States the right to all waste, seepage and return flow which escapes or is discharged beyond the District's boundaries.

E. Article 17 of the contract, purporting to forbid the District from delivering or furnishing any water required under the contract for other than agricultural purposes.

F. Article 32 of the contract, purporting to forbid the District from making any change in its boundaries, such as by the inclusion or exclusion of lands.

G. Articles 34, 35 and 36 of the contract, purporting to forbid the District from furnishing water made available under the contract to any land in excess of 160 acres, held by any single beneficial owner, unless the owner complies with certain further requirements, including the sale of all land in excess of said 160 acres at prices not in excess of those approved by the United States Secretary of the Interior.

H. Articles 25 and 27 of the contract, purporting to hold all lands within the District subject to an *ad valorem* tax [fol. 307] to defray the charges imposed upon the District by the contract, notwithstanding the provisions of Articles 34, 35 and 36 of the contract, above mentioned, prohibiting the furnishing of water to land in excess of said 160 acres.

XIX.

The contract of September 23, 1949, is further invalid under State law, including the State Constitution, Article XIV, Section 3, for the following reasons:

A. Neither the contract, nor the notice of election which preceded it, contains or contained any statement of the maximum amount of money to be payable to the United States for construction purposes and cost of water supply and acquisition of property, nor any provision for the crediting of the payments to be made under such contract to the cost of the Project. In this respect the contract conflicts with the State Water Code, Section 23223.

B. The contract does not provide for or recognize a water right appurtenant to the lands within the District, but negates such right and instead contemplates and permits a continuing power in the Federal Government to furnish or withhold water at the end of the contract period upon such terms and conditions as the United States may then impose.

C. The contract further is contrary to State law in that it purports to deprive the lands within the District, and particularly the lands of said Courtney McCracken and those similarly situated, of water rights recognized under State law.

XX.

With respect to the provisions of said contract having to [fol. 308] do with the so-called "distribution system," the contract and provisions thereof are invalid and void, among other things, for the reason that said contract is indefinite, uncertain; ambiguous and lacking in mutuality and that the election notice calling the purported special election for the approval of said contract did not and does not conform to the requirements of the laws of the State of California for such notice, and in that said election was not legally and fairly conducted, but was illegally called, held and conducted for the reasons more particularly recited in the Findings herein.

XXI.

The contract of September 23, 1949, is invalid and unenforceable for the further reason that numerous of its provisions, purporting to vest an uncontrolled discretion in the Secretary of the Interior, are so ambiguous, indefinite, uncertain and lacking in mutuality as to deny the basis of any contractual undertaking recognized by State law, and in particular the State Water Code, Section 23195.

XXII.

Further with reference to Conclusion XIII above, the Irrigation District Federal Cooperation Law, enacted by the State in 1917, and codified as a part of the State Water Code in 1943, does not exempt from the application of State law, as above declared and applied, the contract of September 23, 1949. Said law authorizes contracts between irrigation districts, including the Ivanhoe Irrigation District, and the United States, but the validity of any such contract must be measured by its consistency with generally-applicable State law. Said law does not purport to, and under Article IV of the California Constitution [fol. 309] could not validly, authorize contracts which are inconsistent with generally-applicable State law or delegate to the Federal Government the power to legislate in behalf of the State. The provisions of the contract above referred to, even if warranted under Federal legislation, are not authorized by State law, which controls.

reason that it denies to the District and its landowners the assurances required of the United States in its trustee relationship toward Project beneficiaries with regard to the rights of the District and its landowners to a permanent supply of project water appurtenant to the land irrigated.

XXVIII

That said contract with respect to the provisions thereof having to do with the delivery of water by the United States to the plaintiff District from Central Valley Project is invalid and void and is contrary to the Federal Reclamation laws and to the laws of the State of California, among other things, in the particulars recited, found and set forth in [fol. 312] the Findings herein, particular reference being here made to paragraphs X, XI, XII, XIII, XIV, XVI, XVII, XX, XXI, XXII, XXV, XXVI, XXCII, (sic) XXCIII, (sic) XXIX, XXX, XXXI, XXXII, XXXIV, XXXV, XXXVI, XXXVII, XLV and XLVI.

XXIX

If the contract of September 23, 1949, could be held to be permitted or required under State and Federal law, or either, such law, for the reasons and in the particulars set forth in Conclusions XVIII, A-H, inclusive, XIX, A-C, inclusive, XX, XXI, XXIV, XXV, XXVI, A-D, inclusive, XXVII and XXVIII, above, would be and is unconstitutional, and would be and is also unconstitutional in its application to the Ivanhoe Irrigation District and to Courtney McCracken and other landowners therein similarly situated and to all landowners of land in the District, in denying them and each of them the equal protection of the laws and due process of law under Article I, Sections 1, 13 and 14 of the California Constitution, and the Fifth Amendment and the Fourteenth Amendment, Section 1, of the United States Constitution. This conclusion independently follows under either of said Constitutions and under each such provision thereof.

XXX

If the contract of September 23, 1949, could be held to be permitted or required under Federal law, such law, for the

reasons and in the particulars heretofore set forth in these Conclusions, would be and is unconstitutional, and would be and is also unconstitutional in its application to the Ivanhoe Irrigation District and to Courtney McCracken and other landowners therein similarly situated, and to all [fol. 313] landowners of land in the District, under the United States Constitution, and in particular the Tenth Amendment thereto.

XXXI

Part A of the contract, including the provisions limiting the term thereto to 40 years, is inseparable from Part B thereof, providing for a major and permanent investment by the District in connection with the construction of a distribution system by the United States within the District for the distribution of project waters to lands within the District, and the invalid provisions of the contract materially affect and are inseparable from other provisions of the contract.

XXXII

A validation of the contract would render the status and relationship of the parties toward each other, respecting water to be furnished by said Project, confused and uncertain and would be prejudicial to the material rights and interests of the District and its landowners in and to the subject matter of the contract both during the term of the contract and upon its termination.

XXXIII

It is and would be unlawful and would cause irreparable harm and damage to plaintiff District and landowners therein for the plaintiff District, its board of directors, or the officers, agents, servants or employees of said District, or any of them, directly or in collaboration with others, to cause or permit the incurring of any obligation or liability upon the part of the plaintiff District or the landowners therein in connection with the foregoing contract, or any part thereof, or to cause or permit any work of [fol. 314] construction to be done in or upon said proposed

distribution system, under said contract in such manner as to incur any liability upon the part of said District or the landowners therein, and any such acts or conduct hereinafter declared to be unlawful should be enjoined. The delivery of water by the United States to the plaintiff District at charges not to exceed $3.50 per acre foot for class 1 water and $1.50 per acre foot for class 2 water and the collection of funds therefor and payment for the costs thereof by the plaintiff District to the United States should not be enjoined.

XXXIV

The court further concludes that the contract of September 23, 1949, between the Ivanhoe Irrigation District and the United States of America, acting by the Bureau of Reclamation, is invalid and unenforceable. This conclusion follows and is based upon the facts found and set forth herein, and upon each fact as found by the court, and is independent of any other of the conclusions, or portions thereof.

XXXV.

There should be entered a permanent injunction, enjoining the Ivanhoe Irrigation District, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from performing or taking any action to perform in behalf of the District the purported contract of September 23, 1949, and from failing or refusing to supply said defendant Courtney McCracken with water for irrigation purposes, with respect to all of his land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination on the [fol. 385] basis of the extent of his holdings of land within the District or any other basis; and affirmatively requiring said District to deliver water to said Courtney McCracken without such discrimination.

XXXVI

The State Engineer is authorized and obligated to proceed diligently with the issuance of permits upon the ap-

plications now held by the United States for the Benefit of the Central Valley Project, incorporating therein such terms and conditions as may be validly imposed within his discretion under the laws of the State of California. In the circumstances of this case, the failure of the United States to secure such permits has not, and may not be deemed to have, impaired the vested rights acquired by the Ivanhoe Irrigation District and the landowners therein, including the defendant McCracken, to the continued use of the project waters. Pending the issuance of permits, limited by such terms and conditions as the State Engineer may lawfully impose, said District and its landowners may continue as of right to receive and put to beneficial use such project waters.

Let judgment be entered accordingly.

Dated this 27th day of February, 1953.

Benjamin C. Jones, Judge of the Superior Court, assigned.

[fol. 316]. IN SUPERIOR COURT OF TULARE COUNTY

No. 39627

JUDGMENT—February 27, 1953

In the above entitled matter, appearances having been made and issues having been joined, and the cause having been tried and the matter submitted to the Court, and the Court having arrived at its decision and directed that Findings of Fact and Conclusions of Law be drawn, and such Findings of Fact and Conclusions of Law having been prepared and served, and objections to said proposed Findings of Fact and Conclusions of Law having been served and filed, and the matter of settling the Findings having been set down for hearing, and the matter having been argued, and the Court having settled said Findings of Fact and Conclusions of Law, and the same having in writing been duly signed and filed herein,

Now, Therefore, and upon and in accordance with the facts found in said written Findings of Fact adopted by the Court and upon and in accordance with the Conclusions of Law settled and filed by the Court herein, it is hereby Ordered, Adjudged and Decreed as follows:

1. That the contract between plaintiff District and the United States, attached to the complaint herein and designated as Exhibit A, dated September 23, 1949, is invalid, void, and without force or effect.

2. That Plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise, be, and they are hereby, permanently en- [fol. 317] joined from performing or taking any action to perform in behalf of said District the said contract or any part thereof and further enjoined from causing or permitting any work of construction to be done in or upon said proposed distribution system, under said contract, in such manner as to incur any liability upon the part of said District or the landowners therein.

3. That the Plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be, and they are hereby, permanently enjoined from failing or refusing to supply defendant Courtney McCracken with water for irrigation purposes, with respect to all of his land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination by reason of the extent of his holdings of land, or on any other basis inconsistent with the findings of fact and conclusions of law signed and filed herein.

4. That the State Engineer is authorized and obligated to proceed diligently with the issuance of permits upon the applications now held by the United States for the benefit of the Central Valley Project, incorporating therein such terms and conditions as may be validly imposed within

his discretion under the laws of the State of California. Pending the issuance of such permits, the Ivanhoe Irrigation District and the landowners therein, including the defendant McCracken, may continue as of right to receive and put to beneficial use the Project waters.

[fol. 318] 5. Defendants appearing herein are entitled to their costs.

Dated: February 27th, 1953.

Benjamin C. Jones, Judge of the Superior Court, assigned.

[fol. 319] [File endorsement omitted]

[fol. 320]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

L. A. No. 23043

THE IVANHOE IRRIGATION DISTRICT, Plaintiff and Appellant,

v.

ALL PARTIES and PERSONS, ETC., Respondents,
THE STATE OF CALIFORNIA, Defendant and Appellant,
COURTNEY McCRACKEN, Defendant and Respondent.

NOTICE OF APPEAL BY THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA TO THE SUPREME COURT OF THE UNITED STATES—Filed April 23, 1957

I

Notice is hereby given that the Ivanhoe Irrigation District and the State of California, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California affirming the judgment of the Superior Court in and for the County of Tulare, State of California, which declared invalid that certain contract between the

Ivanhoe Irrigation District and the United States dated September 23, 1949. The opinion of the Supreme Court of the State of California was filed on January 24, 1957; rehearing was denied by that Court on February 19, 1957. [fol. 321] This appeal is taken pursuant to 28 U.S.C.A. section 1257(1).

II

The Clerk of the Supreme Court of the State of California will please prepare a transcript of the record in this proceeding for transmission to the Clerk of the Supreme Court of the United States. He shall include in said transcript the following:

1. The record, consisting of Clerks Trans. (2 vols.), Supp. Clerks Trans. (1 vol.), Reporters Trans. (7 vols.), heretofore filed with the Supreme Court of the State of California on the appeal to said Court.
2. The opinion by the California Supreme Court in this proceeding filed January 24, 1957.
3. The petition to the California Supreme Court by the State of California for a rehearing filed February 6, 1957, the answers thereto, all the *amicus curiae* briefs filed in support thereof or opposition thereto, and the answers to such *amicus curiae* briefs.
4. The order of the California Supreme Court of February 19, 1957, denying a rehearing.
5. This Notice of Appeal.

III

The questions presented by this appeal all relate to the validity of the previously identified contract between the United States and the Ivanhoe Irrigation District, an [fol. 322] agency of the State of California, providing for delivery of a water supply to the District from the federal Central Valley Project, and the expenditure and repayment of funds for construction of a distribution system by the United States to distribute this water supply within the District.

These questions are as follows:

1. Section 46 of the *Omnibus Adjustment Act of 1926* (44 Stat. 649 (1926), 43 U.S.C. section 423e (1952)) precludes delivery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

   (a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

   (b) Is this section valid or does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

   (c) The California *Irrigation District Federal Cooperation Law* (Calif. Water Code sections 23175 *et seq.*) provides for the delivery and distribution of water acquired under any contract with [fol. 323] the United States "under the relevant acts of Congress" (*id.* section 23197(a)), and "in accordance with the applicable acts of Congress" (*id.* section 23200). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in the California *Irrigation District Federal Cooperation Law?*

   (d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed is [or is] not an unlimited title in the United States?"

   (e) Does section 8 of the *Reclamation Act of 1902* (32 Stats. 390 (1902), 43 U.S.C. sections 372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contract involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of California have jurisdiction to determine:

[fol. 324] a. What water rights or title the United States has acquired?

b. What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in the preceding question are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* deprive the owners thereof of those rights?

8. Does federal law provide that upon repayment the district must be granted title to "works for the storage and distribution of water to and by the district" . . . "not dependent on a future and neces-[fol. 325] sarily discretionary act of Congress?"

9. Does federal law require that the contract specify an obligation for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years?

10. Does section 8 of the *Reclamation Act of 1902* submit the United States to the provisions of State law regulating public utilities where Congress by section 9(e) of the *Reclamation Project Act of 1939* has

provided a system of regulation for federal projects which may be inconsistent with the State system?

11. Section 9(e) of the *Reclamation Project Act of 1939* (53 Stat. 1196 (1939), 43 U.S.C. section 485h(e) (1952)) authorizes the Secretary of the Interior to enter into contracts to furnish water for irrigation purposes from federal reclamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon landowners a [fol. 326] burden "under which they may suffer the loss of water rights at the discretion of the United States" so that it is "contrary to well established constitutional principles and protections"?

Dated: April 22, 1957.

Edmund G. Brown, Attorney General of the State of California, B. Abbott Goldberg, Deputy Attorney General, Adolphus Moskovitz, Deputy Attorney General, 600 State Building, San Francisco 2, California, Attorneys for Appellants, The State of California and The Ivanhoe Irrigation District,

By Adolphus Moskovitz.

fol. 327] Affidavit of Service (omitted in printing).

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fol. 329] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

MADERA IRRIGATION DISTRICT, Plaintiff,

v.

ALL PERSONS having or claiming to have any interest in the contract entered into on the 14th day of May, 1951, between the MADERA IRRIGATION DISTRICT and the UNITED STATES, providing for a water supply for the MADERA IRRIGATION DISTRICT from the Friant Dam, and the construction of a distribution system in said District, and for payment by said District to the United States, Defendants.

SECOND AMENDED COMPLAINT—Filed October 26, 1951

Comes now Madera Irrigation District, plaintiff above named, and files this its Second Amended Complaint, and for cause of action alleges:

I.

That the plaintiff is an irrigation district duly organized and existing under the provisions of the Water Code of the State of California; that the Board of Directors of said District has its office in the County of Madera, State of California.

II

That on the 14th day of May, 1951, the plaintiff entered into a contract in writing with the United States, a true [fol. 2] copy of which said contract is hereto annexed and marked Exhibit "A", and is hereby incorporated by reference in this complaint.

III

That the said contract was approved as a proposed contract by the Board of Directors of said plaintiff district on the 29th day of January, 1951, and by the Secretary of the Interior on the 5th day of February, 1951; that thereafter the said proposed contract and the plan of the project, including a copy of the estimate of cost and the engineers' report, was submitted to the California District Securities Commission for its examination and report; that on the 26th day of March, 1951, the said Commission made its report approving the said contract.

IV

That a true copy of the contract executed by and between the Madera Irrigation District and the United States on May 24, 1939, assigned symbol and number Ilr-1126 and entitled "Contract for Purchase of Property and Water Rights", referred to in the contract mentioned in Paragraph II hereof, is attached to this Second Amended Complaint and marked Exhibit "B" and is hereby incorporated herein and made a part hereof.

V

That on the 18th day of April, 1951, the Board of Directors of plaintiff district called a special election to be held on the 9th day of May, 1951, for the purpose of sub-[fol. 3] mitting the said proposed contract to the voters of the Madera Irrigation District for their approval; that the said Board of Directors caused a notice of said election to be published in The Madera Daily News-Tribune, a newspaper published in the County of Madera, once a week for three successive weeks before the said election, and like notices posted in three public places in each election precinct in the District for twenty days before said election; that a true copy of said notice is hereto annexed and marked Exhibit "C" and is hereby incorporated by reference herein and made a part hereof; that the said election was duly and regularly held as provided in the said notice; that the ballots at the said election contained a brief statement of the general purpose of the contract, substantially as stated

in the notice of election, and the extent of the obligation to be assumed, with the words "Contract—YES", and "Contract —No"; that more than two-thirds of the ballots cast at said election were in favor of the said contract; that on the 14th day of May, 1951, the Board of Directors of said District met at the District office and canvassed the returns from said election, and declared the result thereof, and that the said contract was approved.

VI

That the said election was conducted fairly and in all respects according to law, and that the result of said election was the approval of said contract by the voters of [fol. 4] the said District.

Wherefore, plaintiff prays that the validity of said contract mentioned in Paragraph II hereof, and the authority of the District to make said contract, be determined by the Court, and that the said contract be adjudged and declared to be valid.

David E. Peckinpah, Denver C. Peckinpah, Harold M. Child, L. N. Barber, By David E. Peckinpah, Attorneys for Madera Irrigation District.

Duly sworn to by Hugh G. Rodgers, jurat omitted in printing.

* * * * * * *

[fol. 5] Affidavit of service (omitted in printing).

[fol. 6] EXHIBIT "A" TO SECOND AMENDED COMPLAINT

Approved W.O. 3/27/50
Rev. Appr. W.O. 2/6/51

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND THE MADERA IRRIGATION DISTRICT FOR WATER SERVICE AND CONSTRUCTION OF A DISTRIBUTION SYSTEM

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Approved W. O. 3-27-50
Rev. Appr. W. O. 2-6-51

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Central Valley Project, California

[fol. 9] CONTRACT BETWEEN THE UNITED STATES AND THE MADERA IRRIGATION DISTRICT FOR WATER SERVICE AND CONSTRUCTION OF A DISTRIBUTION SYSTEM

THIS CONTRACT, made this 14th day of May, 1951, in pursuance generally of the Act of Congress approved June 17, 1902 (32 Stat. 388), and all acts of Congress amendatory thereof or supplementary thereto, collectively herein styled the "Federal reclamation laws," and the laws of the State of California, with particular reference to those implementary of the Federal reclamation laws, between the UNITED STATES OF AMERICA, hereinafter styled the "United States," and the MADERA IRRIGATION DISTRICT, herein styled the "District," a political subdivision of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in the City of Madera, State of California.

WITNESSETH, THAT:

EXPLANATORY RECITALS

WHEREAS, the United States is constructing the Central Valley Project for the storage, diversion, carriage, distribution, and beneficial use of water for flood control, irrigation, municipal, domestic, and industrial uses, the generation and distribution of electric energy, salinity control, navigation, and other purposes, of the waters of the Sacramento River and the San Joaquin River and their tributaries; and

[fol. 10] WHEREAS, the District and the United States, on May 24, 1939, executed a contract assigned symbol and number Ilr-1126 and entitled "Contract for Purchase of Prop-

erty and Water Rights," under the terms of which the District, subject to the terms and conditions therein set forth, became entitled to purchase from Friant Dam and Reservoir, a feature of the Central Valley Project, a permanent supplemental supply of Class 1 and Class 2 water in an aggregate average annual amount up to, but not in excess of, two hundred and seventy thousand (270,000) acre-feet which, at the option of the District, should include up to, but not exceed, fifteen percent (15%) of the total amount of Class 1 water as therein defined; and

WHEREAS, under the terms of an agreement dated August 24, 1949, concurred in by the Acting Secretary of the Interior on September 16, 1949, the District assigned to the Chowchilla Water District a portion of the District's right to purchase said water acquired under the aforesaid contract of May 24, 1939, to-wit: an average annual supply of fifty-two thousand (52,000) acre-feet which, at the option of the said Chowchilla Water District, shall include up to, but not exceed, three and seventy-five one-hundredths percent (3.75%) of the total amount of Class 1 water as said Class 1 water is defined in the contract of May 24, 1939, and reserving to the District the right to purchase, as aforesaid, an aggregate average annual supply of Class 1 and Class 2 water in the amount of two hundred and eighteen thousand (218,000) acre-feet which, at the option of the [fol. 11] District, shall include up to, but not in excess of, eleven and twenty-five one-hundredths percent (11.25%) of Class 1 water as defined in the contract of May 24, 1939; and

WHEREAS, the United States on February 6, 1951, consented to the exclusion of approximately nineteen thousand five hundred (19,500) acres of land from the District subject to a further reduction of the amount of water which the District will be entitled to purchase from Friant Dam and Reservoir pursuant to the aforesaid contract of May 24, 1939, as modified by the assignment of August 24, 1949; and

WHEREAS, the District excluded said nineteen thousand five hundred (19,500) acres of land and it is the intention

of the parties hereto that the aforesaid reduction be effected by appropriate provision in this contract; and

WHEREAS, the District desires to contract for the purchase and the United States desires to contract for the furnishing to the District of the said quantity of water which the District is now entitled to purchase under the 1939 contract subject to the terms and conditions contained in said 1939 contract, and the Federal reclamation laws, and the laws of the State of California, and for which the District will make payment to the United States upon the bases, at the rates, and pursuant to the conditions hereinafter set forth; and

WHEREAS, investigations of the stream flow of the Sacramento River and San Joaquin River and their tributaries [fol. 12] indicate that there will be available for furnishing to the District by means of works constructed and planned to be constructed by the United States, the amount of water which the District is now entitled to purchase under the 1939 contract, for surface diversion and direct application for irrigation and directly and indirectly to replenish depleted ground-water underlying the District; and

WHEREAS, in said 1939 contract it was provided, among other things, that the District would convey to the United States the land comprising Friant Dam site, certain gravel-bearing lands therein described and all of the District's right, title, and interest in and to all of the District's water rights on the San Joaquin River and its tributaries, excepting those tributaries which drain into the said river below Mendota Dam, located in Section 19, Township 13 South, Range 15 East, M.D.B.&M., in order that the United States might construct and operate that feature of the Central Valley Project commonly known and called Friant Dam and Reservoir and, in consideration of the said conveyances by the District, the United States agreed, among other things, to construct the Madera Canal as described in said 1939 contract and subject to the terms and conditions therein set forth; and

WHEREAS, the United States recognizes that the District in contracting to transfer and surrender its properties and

rights hereinabove referred to relied upon its right to purchase a permanent supplemental supply of water from [fol. 13] Friant Dam and Reservoir and the agreement that the United States would construct the facilities described subject to the terms and conditions set forth in the 1939 contract; and

WHEREAS, under the circumstances aforesaid the property transferred by the District was no longer necessary to be retained by it for the uses and purposes of the District and it was therefore unnecessary for the District to proceed with its own project for the development of Friant Dam and Reservoir; and

WHEREAS, the United States has now constructed and proposes to operate the Madera Canal, as well as other features of the Central Valley Project now being constructed or planned for construction, in part, for the furnishing of the water which the District is now entitled to purchase pursuant to the 1939 contract; and

WHEREAS, Part A of this contract is being executed by the District in pursuance of the aforesaid rights of the District acquired under the 1939 contract; and

WHEREAS, the District, in order to utilize the water supply to be made available from the Central Valley Project under Part A of this contract and such future contracts as may be made between the United States and the District, desires that a general distribution and lateral system be constructed for the District by the United States, acting by and through the Bureau of Reclamation, United States Department of the Interior, pursuant to the Federal reclamation laws; and

[fol. 14] WHEREAS, the United States is willing to undertake the construction of the aforementioned general distribution and lateral system under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. Wherever used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "contracting officer" means the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Project" means the Central Valley Project, California, of the Bureau of Reclamation, United States Department of the Interior;

(c) "initial delivery date" means the date announced by the Secretary on which water first will be available for furnishing to the District by means of the Madera Canal pursuant to Part A of this contract;

(d) "calendar year" means the period from January 1 through December 31, both dates inclusive;

(e) "Year" means the period from and including March 1 of each calendar year through the last day of February of the following calendar year;

[fol. 15] (f) "Part A" means article 3 through article 11;

(g) "Part B" means article 12 through article 18;

(h) "contract" means article 1 through article 38;

(i) "1939 contract" means the contract of May 24, 1939, symbol and number Ilr-1126, between the United States and the Madera Irrigation District and entitled "Contract for Purchase of Property and Water Rights," as modified by the assignment of August 24, 1949, from the District to the Chowchilla Water District;

(j) "Class 1 water" means that supply of water at Friant Dam and Reservoir which, subject to the contingencies described in article 10 hereof, will be available for delivery from the Friant-Kern and Madera Canals and the San Joaquin River as a dependable water supply during each irrigation season;

(k) "Class 2 water" means that supply of water which becomes available in addition to the supply of Class 1 water and which, because of its uncertainty as to availability and time of occurrence, will be undependable in character and will be furnished only if, as, and when said water is available as determined by the United States.

AMENDMENT OF ARTICLE 14 (a) OF 1939 CONTRACT

2. Article 14 (a) of the 1939 contract is hereby amended as follows:

(i) By deleting therefrom the figure "270,000" and [fol. 16] inserting, in lieu thereof, the figure "172,000", and

(ii) By deleting therefrom the words and figures "fifteen percentum (15%)" and inserting, in lieu thereof, "ten and sixty-five hundredths per centum (10.65%)."

PART A

TERM OF PART A OF CONTRACT

3. This contract shall become effective upon its execution and Part A shall remain in effect for a period of forty (40) years commencing with the year in which the initial delivery date occurs.

PURCHASE CONTRACT OF MAY 24, 1939

4. The executory portions of the 1939 contract, as modified by the assignment of August 24, 1949, from the District to the Chowchilla Water District, and as amended by article 2 of this contract remain and shall remain in full force and effect, and the parties, upon the expiration of the term of Part A hereof, shall be entitled to all of the rights conferred upon them by article 14 of the 1939 contract and shall be subject to all of the terms and conditions of said article except as the aforesaid 1939 contract may be abrogated or amended by specific reference thereto and mutual agreement of the parties: *Provided*, That this contract, during the term of Part A hereof, shall constitute full satisfac-

tion of all of the District's rights under article 14 of the [fol. 17] aforesaid 1939 contract: *Provided, further,* That in lieu of the condition contained in the second sentence of article 14 (e) of the 1939 contract with respect to the time within which the District must exercise the option conferred by article 14 of the 1939 contract, the District shall have the right to exercise said option within six (6) months after the termination of Part A hereof and within six (6) months after the termination of each term provided for in succeeding contracts, and the said condition contained in the second sentence of article 14 (e) of the 1939 contract is hereby amended accordingly, and as amended is incorporated and made a part of this contract. Under this Part A and under succeeding contracts the rates to be charged the District for water service shall not exceed charges made to others than the District for the same class of water and service from Friant Dam and Reservoir.

WATER TO BE FURNISHED TO DISTRICT

5. (a) After the initial delivery date and until March 1 of the year following the completion of the distribution system, as announced by the contracting officer as prescribed in article 12 (b), or for a period of five (5) years after March 1 of the year following that in which the initial delivery date occurs, whichever is the longer period, the United States will furnish to the District and the District each year will accept and pay, as provided in article 7 hereof, for Class 1 and Class 2 water from the Madera Canal in the quantities specified in a schedule submitted [fol. 18] by the District in accordance with article 6 (b) hereof for such year: *Provided,* That no Class 1 water shall be furnished to the District and the District shall not be obligated to accept and pay for Class 1 water until the date, announced by the contracting officer, that the facilities necessary for furnishing said Class 1 water have been completed and after said date no more than sixty-nine percent (69%) of the total quantity of water called for by the District during any such year in the aforesaid schedule shall be Class 2 water, nor shall the United States be obligated to furnish more than eighty-five thousand (85,000) acre-feet of Class 1 water during any such year.

(b) In the year commencing on March 1 following the completion of the distribution system, as announced by the contracting officer as provided in article 12 (b), or the sixth year from March 1 of the year in which the initial delivery date occurs, whichever is the later, and each year thereafter during the remainder of the term of Part A, the United States shall furnish to the District from the Madera Canal and the District shall accept and pay for:

(i) Eighty-five thousand (85,000) acre-feet of Class 1 water: *Provided*, That at any time the parties hereto by mutual agreement may increase or decrease the amount of Class 1 water required thereafter to be furnished each year to the District by the United States during the remainder of the term of this contract; and

(ii) One hundred and eighty-six thousand (186,000) [fol. 19] acre-feet of Class 2 water: *Provided*, That the District shall not be obligated to accept nor shall the United States be obligated to furnish more than forty thousand (40,000) acre-feet of Class 2 water during any period of thirty (30) consecutive calendar days, and: *Provided, further*, That at any time or times during the term of Part A the amount of Class 2 water required to be accepted and paid for by the District pursuant to this article each year during the remaining term of Part A may be increased or decreased if the District and the contracting officer concur in a finding that such increase or decrease is necessary or desirable.

(iii) The quantities of eighty-five thousand (85,000) acre-feet of Class 1 water and one hundred and eighty-six thousand (186,000) acre-feet of Class 2 water as referred to in (i) and (ii) above have been agreed upon as those which, upon the basis outlined, will most nearly approximate the furnishing of an average annual supply of one hundred and seventy-two thousand (172,000) acre-feet of water to the District if Friant Dam and Reservoir is operated as presently planned and anticipated. The United States at any time or times may amend or revise its plan of operation of Friant Dam and Reservoir but if said revision or

amendment of the plan of operation substantially impairs or prejudices the possibility of the District obtaining an average annual supply of one hundred and seventy-two thousand (172,000) acre-feet of water pursuant to this contract, the quantities set forth in sub- [fol. 20] divisions (i) and (ii) shall be adjusted so that the possibility of the District obtaining an average annual supply of one hundred and seventy-two thousand (172,000) acre-feet of water pursuant to this contract will be restored and maintained unimpaired.

TIME FOR DELIVERY OF WATER

6. (a) On or before February 15, of each calendar year, beginning after the initial delivery date, the contracting officer shall, by a written notice to the District, announce the quantity of Class 2 water estimated to be available for delivery to the District during the year immediately to follow. The contracting officer may revise the aforesaid estimate but, upon doing so, he shall so notify the District in writing and the District shall be obligated to accept and pay for the addjtional quantities so announced by the contracting officer to be available for the District.

(b) The District shall submit in writing to the contracting officer, on or before March 1 of each year, a schedule subject to the provisions hereof, indicating the desired times and quantities for the delivery of all Class 1 and Class 2 water during such year. The United States shall, within the provisions hereof, as conclusively determined by the contracting officer, make all reasonable effort to deliver said water in accordance with said schedule, or any revision thereof submitted by the District within a reasonable time before the desired change, if any, of time for delivery.

[fol. 21] (c) The District may, with the written consent of the contracting officer, in any year exchange water with any other District which has contracted with the United States for water from the Project. No sale or other disposal by the District for use outside the District of any water, or the right to the use thereof, furnished to the District pursuant to this contract shall be valid without the contracting officer's written consent thereto.

RATE AND METHOD OF PAYMENT FOR WATER

7. (a) The contracting officer will, on or before February 15 of each calendar year, by a written notice, announce to the District the rates of payment to be made by the District for all water to be delivered to it pursuant to this contract during the ensuing year; but in no event shall the rates so announced be in excess of three dollars and fifty cents ($3.50) per acre-foot for Class 1 water and one dollar and fifty cents ($1.50) per acre-foot for Class 2 water.

(b) The District shall, each year during the period described in article 5 (a), in advance of the delivery of any water for such year, make payments for all Class 1 and Class 2 water requested by the District in the schedule submitted as aforesaid at the rates fixed and in the manner provided in (a) of this article.

(c) During the period described in article 5 (b), the District shall, each year in advance of the delivery of water for said year, make payment to the United States [fol. 22] for all water to be furnished to the District pursuant to article 5 (b), at rates fixed as provided in (a) of this article, at the times and in the manner as follows:

(i) For all Class 1 water which the District is required to receive pusuant to the provisions of article 5 (b) (i) and for all Class 2 water which the contracting officer theretofore has announced will be available to the District and which the District is required to receive and pay for pursuant to article 5 (b) (ii). Such payment shall be made by the District on or before March 1 or such other date, prior to the time for the commencement of delivery of such water in the particular year, as may be specified by the contracting officer by a written notice to the District; and

(ii) For all Class 2 water actually available in excess of that originally announced by the contracting officer and which the District is required to receive pursuant to the second sentence of article 6 (a). Such payment by the District shall be made on or before

the date, as announced by the contracting officer, that delivery of such Class 2 water will be commenced.

(d) In the event that the District fails or refuses to accept delivery of the quantities of water available for delivery to and required to be accepted by it pursuant to this contract, or in the event that the District in any year, commencing with the year in which the distribution system [fol. 23] has been completed as announced by the United States as provided in article 12 (b) hereof or the sixth year after the initial delivery date, whichever is the later, fails to submit a schedule for delivery as provided in article 6 (b), said failure or refusal shall not relieve the District of its obligation to pay for said water and the District agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this contract.

(e) Water furnished to the District during any month designated in the schedule submitted by it pursuant to article 6 (b), for the furnishing of water to the District, shall be deemed to have been accepted as Class 1 water to the extent that Class 1 water is called for in said schedule for said month, and all water furnished to the District in excess of the amount of Class 1 water called for in said schedule for said month shall be deemed to have been accepted as Class 2 water. Water available for furnishing to the District in accordance with the approved schedule and not accepted by the District shall be deemed to have been accepted by the District in accordance with the aforesaid schedule.

ADJUSTMENTS FOR CLASS 2 WATER

8. The amount of any overpayment by the District by reason of the quantity of Class 2 water actually available for the District during any year, as conclusively determined by the contracting officer, having been less than the quantity of such water which the District otherwise under [fol. 24] the provisions of this contract would have been required to receive and pay for, shall be applied first to any accrued indebtedness arising out of Part A and then due and owing to the United States by the District, and any

amount of such overpayment then remaining shall, at the option of the District, be refunded to the District or credited upon amounts to become due to the United States from the District under the provisions of Part A in the ensuing year.

POINT OF DELIVERY, MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

9. (a) The water to be furnished to the District pursuant to this contract will be delivered from the Madera Canal at such points as may be agreed upon in writing by the contracting officer and the District.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to (a) of this article, and with equipment installed, operated, and maintained by the United States. Upon the request of the District, the accuracy of such measurements will be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water which has been delivered to the District hereunder or which is in or escapes from facilities not being operated and maintained by the United States, nor for claim of dam-[fol. 25] age of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with such control, carriage, handling, use, disposal, or distribution of such water: *Provided*, That the United States reserves the right to all waste, seepage, and return flow water derived from water furnished to the District hereunder and which escapes or is discharged beyond the District's boundaries.

(d) Notwithstanding any provision of this contract to the contrary, the United States shall not be obligated to furnish either Class 1 or Class 2 water to the District pursuant to Part A unless and until the construction by the United States of the facilities required for the furnishing of the respective class of water to the District has been completed, as conclusively determined by the contracting officer.

(e) The United States may temporarily discontinue or reduce the amount of water to be furnished to the District as herein provided for purposes of necessary investigation, inspection, maintenance, repair, or replacement of any of the Project facilities necessary for the furnishing of water to the District or any part thereof but so far as feasible the United States will give the District due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the United States will, upon the resumption of service, approximate, to the extent that it is feasible to do so, the [fol. 26] quantity of water which would have been furnished to the District in the absence of such contingency.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

10. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to the District by the United States pursuant to this contract through and by means of the Project and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of errors in operation, drouth, or unavaidable causes. In no event shall the United States either (i) deliver from Friant Reservoir in any year any Class 2 water pursuant to this or any other contract heretofore or hereafter entered into involving the same Project water supply until the contracting officer shall have determined that the quantity of Class 1 water required to be delivered to the District from Friant Reservoir hereunder and to others under any such other contract will be available for delivery in said year in conformance with the schedule submitted by the District pursuant to article 6 (b) hereof, nor (ii) execute contracts which, together with this contract, shall in the aggregate provide for furnishing during the life of this contract Class 1 water from Friant Reservoir in excess of eight hundred thousand (800,000) acre-feet per year. In any year in which there may occur a shortage from any cause, the United States reserves the [fol. 27] right to apportion the available water supply among the District and others entitled, under existing and

future contracts, to receive Class 1 water from Friant Reservoir in accordance with the conclusive determination of the contracting officers as follows:

(i) A determination shall be made of the total quantity of Class 1 water agreed to be accepted during the respective year under all contracts then in force for the delivery of Class 1 water through the Friant-Kern and Madera Canals and the San Joaquin River from Friant Reservoir, the amount so determined being herein referred to as the "Class 1 contractual commitments";

(ii) A determination shall be made of the total quantity of Class 1 water which is available for meeting Class 1 contractual commitments, the amount so determined being herein referred to as the "available supply";

(iii) The total quantity of Class 1 water agreed to be accepted by the District during the respective year, under article 5 hereof, shall be divided by the Class 1 contractual commitments, the quotient thus obtained being herein referred to as the District's "contractual entitlement";

(iv) The available supply shall be multiplied by the District's contractual entitlement and the result shall be the quantity of water required to be delivered by the United States to the District for the respective year, but in no event shall such amount exceed the [fol. 28] total quantity of Class 1 water agreed to be accepted by the District pursuant to article 5 hereof.

In so far as determined by the contracting officer to be practicable, the United States will, in the event a shortage appears probable, notify the District of such determination in advance of the irrigation season.

(b) If there only is available in any year, as determined by the contracting officer, for furnishing to the District pursuant to this contract less than the quantity of Class 2 water which the District otherwise would be entitled to receive pursuant to article 5 hereof, the quantity of Class 2

water which shall be furnished to the District by the United States will be determined in the manner set forth in paragraphs (i), (ii), (iii), and (iv) of subdivision (a) of this article for apportioning Class 1 water in the event of a shortage: *Provided*, That if the total quantity of Class 2 water agreed to be accepted during such year under this and all other contracts for Class 2 water shall be in excess of one million four hundred thousand ($1,400,000) acre-feet, the District shall be entitled to receive and obligated to accept and pay for thirteen and three tenths percent (13.3%) of the available supply of Class 2 water, but in no event shall the total amount of Class 2 water required to be furnished by the United States and accepted and paid for by the District in any year be in excess of one hundred and eighty-six thousand (186,000) acre-feet.

[fol. 29] (c) In the event that in any year there is delivered to the District, by reason of any such shortage or apportionment, or any discontinuance or reduction of service as set forth in article 9 (e) hereof, less than the quantity of water which the District otherwise would be entitled to receive hereunder, there shall be made an adjustment on account of the amounts paid to the United States by the District for Class 1 water for said year, in a manner similar to that provided for in article 8 hereof. To the extent of such deficiency, such adjustment shall constitute the sole remedy of the District or anyone having or claiming to have by, through, or under the District, the right to the use of any of the water supply provided for herein. The United States does not guarantee the furnishing and delivery of any Class 2 water: *Provided*, however, That if, as, and when said water is available for delivery, as determined by the United States, said Class 2 water will be furnished and delivered to the District as provided in article 5 hereof as modified by subdivision (b) of article 10.

(d) The rights of the District under Part A of this contract are subject to the terms of the "Contract for Exchange of Waters," dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and

Irrigation Company, Incorporated, and others, recorded September 18, 1939, in the office of the County Recorder of

(i) Fresno County in Book 1810 of Official Records at page 50;

[fol. 30] (ii) Stanislaus County in Book 704 of Official Records at page 1;

(iii) Merced County in Book 623 of Official Records at page 417;

(iv) Madera County in Book 247 of Official Records at page 113.

USE OF WATER FURNISHED TO DISTRICT

11. Water furnished to the District by the United States pursuant to Part A shall not be delivered or furnished by the District for any purposes other than agricultural purposes, including, but not restricted to, the watering of livestock, or underground water replenishment, without the written consent of the contracting officer.

PART B

CONSTRUCTION OF WORKS AND LIMIT OF EXPENDITURES THEREFOR

12. (a) To the extent that funds may now or hereafter be available by appropriation the United States will expend toward construction of a general distribution and lateral system, surface drainage works, and other related distribution and surface drainage works, all collectively comprising and herein styled the "distribution system," a sum not in excess of eight million three hundred and twenty thousand dollars ($8,320,000), or so much thereof as the contracting officer deems expedient or necessary for the completion of the distribution system. Said distribution system will not include the Madera Canal, the Madera Canal right-of-way nor any facilities or structures located [fol. 31] thereon. The distribution system will be constructed so as to provide facilities for the delivery of water from the Madera Canal to each unit of a total of approximately one hundred and thirteen thousand

(113,000) acres of irrigable land, each unit to be as mutually agreed upon by the District and the contracting officer, but in no event to comprise more than one hundred and sixty (160) acres of such land. The general type and layout of the distribution system shall be subject to the review and approval of the District, evidenced by a resolution of the District Board of Directors, prior to the commencement of construction of the distribution system.

(b) The contracting officer shall notify the District, in writing, when total expenditures have been made to the limit determined as provided in (a) of this article or so much thereof as the contracting officer considers necessary and useful for the construction of the distribution system as described in (a) of this article. Upon the furnishing of such notice the distribution system shall be deemed to have been completed within the meaning of this contract.

PAYMENT BY DISTRICT

13. (a) The District will repay to the United States the actual cost, but in no event in excess of eight million three hundred and twenty thousand dollars ($8,320,000), incurred by the United States in providing the distribution system. The obligation defined in this subarticle shall [fol. 32] be referred to hereinafter as the "construction obligation."

(b) The United States will invoke all legal and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it, without cost to the District, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owner of the servient lands for the value of improvements which may be destroyed and the District agrees that the United States may include such disbursements in the cost of the distribution system to be repaid by the District. The District agrees to convey to the United States, without cost, on the request of the contracting officer, the unencumbered fee simple title to any and all lands owned by it, or perpetual easements therein, required for right-of-way purposes for the distribution system. Where rights-of-way are required for works herein agreed to be constructed by

the United States, and such rights-of-way are not reserved to the United States under acts of Congress or otherwise, and the lands over which such rights-of-way are required are not then owned by the District, then the District agrees that it will, upon request of the United States, acquire such lands, or perpetual easements therein, using in connection therewith such forms of contracts, deeds, and other necessary papers as may be required by the United States, and purchases shall be only at prices that are satisfactory to the Secretary. Title shall be taken in the name of the United States, and on procuring execution of the necessary contracts, deeds, and other papers they shall be trans-
[fol. 33] mitted by the District to the United States, by whom payment will be made after title has been found satisfactory to the United States. Expenses incurred by the District in connection with acquisition above provided for shall, to the extent approved by the contracting officer, be paid to the District on the basis of annual statements submitted at the close of each calendar year, and shall be chargeable as part of the construction costs.

(c) The construction obligation shall be paid by the District in forty (40) successive, equal, annual installments, the first of which shall become due in the year following the last year of the development period described in article 14 hereof. Such installments shall be payable one-half (½) thereof on February 1 and one-half (½) thereof on July 1, of each calendar year. If the actual construction cost shall not have been determined by the Secretary when the first construction obligation shall have become due thereunder, he shall announce the estimated construction cost. Such estimated construction cost shall govern the construction obligation installments herein referred to until such time as the actual construction obligation can be determined and a statement thereof furnished to the District. When notice of the actual construction obligation has been given to the District, the installments coming due thereafter from the District shall be adjusted to reflect any difference between the estimated construction cost and the acutal construction cost of the distribution system.

[fol. 34] (d) At any time the contracting officer may, in his discretion, upon request of the District, evidenced by a certified copy of a resolution of its Board of Directors, provide for dates upon which annual payments of the District's construction obligation shall become due and payable other than and in lieu of the dates fixed for the payment of such annual installments as provided in (c) of this article.

DEVELOPMENT PERIOD

14. A development period for the lands in the District is hereby fixed at two (2) years from and including the first year in which the distribution system is so far completed as to be available for use, and water is available for furnishing to the District pursuant to Part A of this contract for substantially all of the irrigable lands in the District as announced by the Secretary in a written notice to the District setting forth the date of such availability. Such notice shall be furnished to the District at least six (6) months prior to the date of the commencement of the development period.

ESTIMATED COST OF OPERATION AND MAINTENANCE TO BE PAID IN ADVANCE

15. (a) During the time that the distribution system or any part thereof is being operated by the United States, as provided in article 16, commencing with the first year of the development period, and each calendar year thereafter, the District will pay in advance to the United States not [fol. 35] later than January 1, upon estimates therefor to be furnished by the United States on or before September 1 next preceding, the estimated cost of operation and maintenance for such calendar year. The surplus of any amount so advanced by the District for operation and maintenance by the United States during any calendar year shall be credited on future estimated cost of operation and maintenance by the United States: *Provided*, That any such operation and maintenance charges paid to the United States by the District during the development period which are in excess of the actual cost of the operation and maintenance of the distribution system by the United States

for such development period shall be credited to the construction obligation of the District.

(b) Whenever in the opinion of the contracting officer the amounts available from payments made by the District of the estimated annual operation and maintenance charges will be inadequate properly to operate and maintain the distribution system to the end of any calendar year, he may give written notice to the District, herein styled supplemental operation and maintenance charge notice, stating therein the amount of additional advance payments of funds required for such operation and maintenance, and the District shall pay the amount thereof on or before the dates specified in such supplemental operation and maintenance charge notice.

(c) Any amount of said operation and maintenance payments by the District, for any year subsequent to the de- [fol. 36] velopment period, remaining unexpended and unobligated in the possession of the United States on the effective date of a transfer in whole or in part of the distribution system to the District for operation and maintenance, in accordance with article 16 hereof, shall be refunded to the District.

(d) To the extent that the distribution system is operated and maintained by the United States, there shall be included as a part of the operation and maintenance costs, as covered by the provisions of this article, such items for administration, supervision, inspection, replacement, and general expenses as properly are chargeable to such work in the opinion of the contracting officer.

TRANSFER OF OPERATION AND MAINTENANCE TO DISTRICT— UNITED STATES TO BE HELD HARMLESS

16. (a) On the date of the commencement of the development period, the District shall take over and at its own expense operate and maintain the distribution system or any part thereof described in a transfer notice to be furnished to the District by the Secretary. The District agrees to accept, upon the effective date of the transfer notice, the care, operation, and maintenance of the transferred

works and thereafter, without expense to the United States, to care for, operate and maintain the transferred works and deliver water therefrom in full compliance with the Federal reclamation laws and the terms of this contract and in such manner that said work shall remain in as good and efficient condition for the development, diversion, and [fol. 37] distribution of the aforesaid water supply as on the effective date of such transfer to the District. The District will use all proper methods to secure the economical and beneficial use of the water delivered by means of the distribution system.

(b) At any time prior to full payment of the construction obligation that the contracting officer determines that the District has not cared for, operated, maintained, or delivered water from the transferred works in the manner as aforesaid, the United States may take back and operate and maintain such works, and the District hereby agrees to surrender possession of said works. The works so taken back for operation and maintenance by the United States may similarly be retransferred to the District, upon furnishing the District ninety (90) days' written notice of intention to retransfer. If any works are taken back by the United States at such time that funds for the operation and maintenance cannot be advanced in accordance with the procedure set forth in article 15 hereof, the District hereby agrees, on the basis of statements of estimates to be submitted by the contracting officer, to advance sufficient funds to provide for the operation and maintenance of such works until such funds can be provided under the procedure set forth as aforesaid in article 15 hereof.

(c) No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the contracting officer. The District [fol. 38] shall make promptly any and all repairs to the transferred works which, in the opinion of the contracting officer, are deemed necessary for the proper care, operation, and maintenance of the same. If at any time in the opinion of the contracting officer any part of the transferred works shall from any cause be in a condition unfit for service, he may order that the water be turned out and shut off from

that part of the distribution system until in his opinion, such property is put in proper condition for service. In the event the District neglects or fails to make such repairs, the United States may cause the repairs to be made and may charge the cost therefor to the District, which charge the District shall pay in the manner provided in article 17 hereof. The District shall provide for the collection of sufficient operation and maintenance or toll charges to pay all such bills to the United States within the time stated herein in addition to providing the necessary funds to meet the other obligations of the District.

(d) The United States may cause to be made from time to time, but in any event no more than three times per year, a reasonable inspection of the transferred works to ascertain whether the terms of this contract are being executed by the District. Such inspection shall include examination of the transferred property and of the books, records, and papers of the District together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records, and programs connected with said property. [fol. 39] The actual expenses of such inspections and examinations shall be paid by the District to the United States in the manner provided in article 17 hereof.

(e) No liability shall accrue against the United States, its officers and employees because of damages caused by the operation of the distribution system by the District.

DISTRICT TO PAY CERTAIN MISCELLANEOUS COSTS RELATING TO TRANSFERRED WORKS

17. In addition to the other payments to be made by the District as provided by this contract, the District shall pay to the United States, on or before April 1 of the calendar year following that in which the same shall have been incurred and a statement thereof furnished by the United States, the following costs:

(a) Such items of cost incurred by the United States in connection with the distribution system for administration, supervision, and inspection during the time the distribution system is operated and maintained by the District and for the period covered by the statement;

(b) The cost of repairs to transferred works made by the United States as provided in article 16 hereof.

COMPUTATION OF COSTS

18. The actual cost of the distribution system, which will constitute the District's construction obligation, shall embrace all expenditures of whatsoever kind in connection with, growing out of, or resulting from work performed in [fol. 40] connection with the distribution system, including but not limited to the cost of labor, material, equipment, engineering, and legal work, superintendence, administration and overhead, rights-of-way, property and damage of all kinds, and shall include all sums expended by the Bureau of Reclamation in surveys and investigations in connection with the irrigation of District lands, both prior to and after the execution of this contract, and the expense of all soil investigations and other preliminary work. The determination of what costs are properly chargeable hereunder, and the amount thereof, shall conclusively be made by the contracting officer.

END OF PART B

AGREED CHARGES A GENERAL OBLIGATION OF THE DISTRICT

19. The District as a whole is obligated to pay to the United States the charges becoming due as provided in this contract notwithstanding the individual default in the payment to the District by individual water users of assessments, tolls or other charges levied by the District.

ALL BENEFITS CONDITIONED UPON PAYMENT

20. Should any assessment or assessments levied by the District against any tract of land or water user in the District and necessary to meet the obligations of the District under this contract be judicially determined to be irregular or void or should the District or its officers be enjoined or restrained from making or collecting any assess- [fol. 41] ments upon such land or from such water user as provided for herein, then such tract shall have no right to

any of the benefits of this contract, and no use shall be made of the distribution system nor any water made available by the United States pursuant hereto be furnished for the benefit of any such lands or water users, except upon the payment by the landowner of his assessment or a toll charge for the use of the distribution sysyem or such water, notwithstanding the existence of any contract between the District and the owner or owners of such tract. Contracts, if any, between the District and the water users involving service from the distribution system or water furnished pursuant to this contract shall provide that such use shall be subject to the terms of this contract. It is further agreed that the payment of charges at the rates and upon the terms and conditions provided for herein is a prerequisite to the right to service from the distribution system or water furnished to the District pursuant to this contract; and no irregularity in levying taxes or assessment by the District, nor lack of authority in the District, whether affecting the validity of District taxes or assessments or not, shall be held to authorize or permit any water user of the District to demand or receive service or water made available pursuant to this contract, unless charges at the rates and upon the terms and conditions provided for herein have been paid by such water user.

LEVY OF TAXES AND ASSESSMENTS
FIXING OF RATES AND TOLLS

[fol. 42] 21. The District will cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of the District to meet its obligations hereunder, to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract. The District may, either or both, require the payment of toll charges or levy assessments for such water or service. All assessments levied by the District to meet the obligations accruing under this contract shall, unless otherwise determined by the Board of Directors of the District, be upon an *ad valorem* basis.

REFUSAL OF WATER IN CASE OF DEFAULT

22. No water or service shall be furnished to the District or by the District to or for the use of any lands or parties therein during any period in which the District may be in arrears in the advance payment of operation and maintenance or toll or rental charges or for more than twelve (12) months in the payment of construction charges accruing under this contract. No water or service shall be furnished to or by the district pursuant to this contract for lands or parties which are in arrears in the payment to the District of any assessments, rates, tolls, or rental charges of the District levied or established by the District and necessary for the purpose of raising revenues to meet the payment by the District to the United States of the [fol. 43] District's obligation under this contract. The provisions of this article are not exclusive and action taken pursuant hereto shall not prejudice or preclude the United States from exercising any other remedy to enforce collection of any amounts due hereunder.

PENALTY UPON DELINQUENCY IN PAYMENT

23. Upon every installment of money required to be paid by the District to the United States pursuant to this contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one-half (½) of one (1) percent per month of the amount of such delinquent installment from and after the date when the same becomes due until paid, and the District hereby agrees to pay said penalty: *Provided*, That no penalty shall be chargeable against the net amount of any adjustment made pursuant to article 8 hereof.

DISTRICT TO KEEP BOOKS AND RECORDS AND REPORT CROP AND OTHER DATA

24. The District shall establish and maintain account and other books and records sufficient to enable it to furnish, in so far as the District is permitted to do so by the laws of the State of California, to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the United

States as to information pertaining to (a) accounts and financial transactions of the District, in so far as such information pertains to this contract and operations thereunder, (b) crops raised and agricultural and livestock prod-
[fol. 44] ucts produced on the lands within the District, a report thereon to be furnished to the contracting officer annually on or before December 31.

Inspection of Books and Records

25. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the Project account books and official records of the Bureau of Reclamation, in so far as the same pertain to the matters and things provided for in this contract, relating to the construction, acquisition, care, operation and maintenance of the distribution system, with the right at any time during office hours to make copies thereof, and the proper representatives of the United States shall have similar rights in respect to the account books and records of the District.

Changes in Organization of District

26. While this contract is in effect no change will be made in the District either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

Title to Remain in the United States

27. Title to all of the Project works, including the distribution system constructed by the United States pursuant to this contract, shall be and remain in the name of the United States until otherwise provided for by the Congress, notwithstanding the transfer hereafter of any of such
[fol. 45] works to the District for operation and maintenance.

LAND NOT TO RECEIVE SERVICE FROM DISTRIBUTION SYSTEM OR WATER FURNISHED TO DISTRICT BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

28. (a) No water or service made available pursuant to this contract shall be furnished to any excess lands as defined in article 30 hereof unless the owners thereof shall have executed valid recordable contracts in form prescribed by the United States, agreeing to the provisions of articles 28, 29, and 30 of this contract; agreeing to the appraisal provided for in article 29 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the Project, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water or service made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer, and upon proof of fraudulent representation as to the true consideration involved in such sale the United States may instruct the District by written notice to refuse to furnish any water or service subject to this contract to the land involved in such fraudulent sales and the District thereafter shall not furnish said water or service to such lands.

[fol. 46] (b) If Project water furnished to the District pursuant to this contract reaches the underground strata of excess land owned by a large land owner who has not executed a recordable contract and the large land owner pumps such Project water from the underground, the District will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of Project water by the District to nonexcess lands or to excess lands with respect to which a recordable contract has been executed.

VALUATION AND SALE OF EXCESS LANDS

29. (a) The value of the excess irrigable lands within the District, held in private ownership of large land owners as defined in the next succeeding article hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appointment of the third, the presiding justice of the Third District Court of Appeal of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal;

(i) No value shall be given such lands on account of [fol. 47] the existing or prospective possibility of securing water or service from the distribution system;

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the first two appraisals and each subsequent appraisal requested by the United States shall be paid by the United States:

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large land owner may be appraised in like manner.

(e) Excess irrigable lands sold by large land owners within the District shall not carry the right to receive water or service made available pursuant to this contract for such land and the District agrees to refuse to furnish such water or service to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the District.

(f) The District agrees to take all reasonable steps requested by the contracting officer to ascertain the occurrence and conditions of all sales of irrigable land of large land owners in the District and to inform the United States concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the [fol. 48] office of the District and like copies in such principal office of the Bureau of Reclamation as may be established hereafter in connection with the distribution system and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LANDS

30. (a) As used herein the term "excess land" means that part of the irrigable land within the District in excess of one hundred and sixty (160) acres held in the beneficial ownership of any single person, or in excess of three hundred and twenty (320) acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large land owner" means an owner of excess lands and the term "nonexcess land" means all irrigable land within the District which is not excess land as defined herein.

(b) Each large land owner as a further condition precedent to the right to receive water or service made available pursuant to this contract for any of his excess land shall:

(i) Before any water is furnished by the District to his excess land, execute a valid recordable contract in form prescribed by the United States, agreeing to the provisions herein contained in articles 28, 29, and 30 and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to [fol. 49] exceed the approved, appraised value of such excess land and within a period of ten (10) years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of ten (10) years the Secre-

tary shall have the power to dispose of said land subject to the same conditions on behalf of such large land owners; and the District agrees that it will refuse to furnish said water or service to any large land owner other than for his nonexcess land until such owner meets the conditions precedent herein stated;

(ii) Within thirty (30) days after the date of notice from the United States requesting such large land owner to designate his irrigable lands under the Project which he desires to designate as nonexcess land, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the Bureau of Reclamation, his written designation and description of lands so selected to be nonexcess land and upon failure to do so the District shall make such designation and mail a notice thereof to such large land owner, and in the event the District fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer, who will mail a notice thereof to the District and the large land owner. The large land owner shall become bound by any such action on the part of [fol. 50] the District or the contracting officer and the District will furnish said water and service only to the land so designated to be nonexcess land. A large land owner may, with the consent of the contracting officer, designate land other than that previously designated as nonexcess land: *Provided*, That an equal acreage of the land previously designated as nonexcess shall, upon such new designation, become excess land thereafter subject to the provisions of articles 28, 29, and 30 of this contract and shall be described in an amendment of such recordable contract as may have been executed by the large land owner in the same manner as if such land has been excess land at the time of the original designation.

AMENDMENT OF FEDERAL RECLAMATION LAWS

31: In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal

reclamation laws, articles 28, 29 and 30 of this contract will no longer be of any force or effect, and, in the event that the Congress amends the excess-land provisions or other provisions of the Federal reclamation laws the United States agrees, at the option of the District, to negotiate amendments of appropriate articles of this contract, all consistently with the provisions of such repeal or amendment.

Contingent Upon Appropriations or Allotments of Funds

(32) The expenditure of any money or the performance of any work by the United States herein provided for which [fol. 51] may require appropriations of money by the Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of the Congress so to appropriate funds or the failure of an allotment of funds shall not relieve the District from any obligations then accrued under this contract and no liability shall accrue to the United States in case such funds are not appropriated or allotted.

Officials Not to Benefit

33. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Notices

34. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given if deposited in the United States Post Office, on the part of the United States in a franked envelope addressed to the District at its office and on the part of the District in a postage prepaid envelope addressed to the Bureau of Reclamation, Department of the Interior, Sacramento, California, or such other address as from time to time may

be designated by the contracting officer in a written notice to the District: *Provided*, however, That this article shall not preclude the effective service of any such notice or [fol. 52], announcement by other means.

ASSIGNMENT PROHIBITED: SUCCESSORS AND ASSIGNS OBLIGATED: DEFAULT

35. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the United States. Any waiver at any time by either party to this contract of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any subsequent default or matter. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States as amended (41 U.S.C. 15).

ASSURANCE RELATING TO VALIDITY OF CONTRACT

36. Promptly after the execution and delivery of this contract the District shall file and prosecute, to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and the proceedings of the District Board of Directors and of the District leading up to and including the making of this contract and the validity of the provisions thereof, as provided for by Section 23225 [fol. 53] of the Water Code of California (St. 1943, Ch. 368, Div. 11, Part 6, Chap. 2, Art. 3, Sec. 23225, approved May 13, 1943).

PERFORMANCE OF WORK WITH CONTRIBUTED FUNDS

37. (a) Pursuant to the Act of Congress of March 4, 1921 (41 Stat. 1367, 1404), the United States will perform with funds contributed by the District any construction or maintenance work on the distribution system not otherwise

provided for by this contract, or any construction work covered by this contract but for which funds may not be available; *Provided,* That the undertaking of any such work and the plans therefor must be approved, funds therefor shall be advanced by the District as may be directed by the contracting officer and there shall be submitted to the United States a certified copy of the resolution of the Board of Directors of the District describing the work to be done and authorizing its performance with contributed funds.

(b) After completion of any work so undertaken the District will be furnished with a statement of the cost thereof, and any unexpended balance of the funds will be refunded to the District or applied as otherwise directed by the District, and the amount by which the cost of such work exceeds the amount of the funds advanced by the District therefor shall be paid by the District to the United States as the contracting officer may be direct.

NONDISCRIMINATION

38. The District shall not discriminate against any [fol. 54] employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in contracts relating to the performance of this contract. This provision, however, does not refer to, extend to, or cover the activities of the District which are not related to or involved in the performance of this contract.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year hereinabove written.

THE UNITED STATES OF AMERICA

May 14, 1951
1:35 P. M.

By (Sgd.) RICHARD L. BOKE
Regional Director, Region 2
Bureau of Reclamation
U. S. Department of the Interior

MADERA IRRIGATION DISTRICT

By (Sgd.) J. M. ALLEN
President of the Board
of Directors

(Sgd.) C. A. RIDGEWAY

(Sgd.) A. T. ROBERTS

(Sgd.) JOHN A. FRANCHI

(Sgd.) DEE V. ROMANS
Members of the Board
of Directors

(SEAL)

Attest:

(Sgd.) HUGH G. RODGERS
Secretary, Board of
Directors
Madera Irrigation District

[fol. 55] EXHIBIT "B" TO SECOND AMENDED COMPLAINT

1939 CONTRACT
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL VALLEY PROJECT, CALIFORNIA

Contract for Purchases of Property and Water Rights

1. THIS CONTRACT, made this 24th day of May, nineteen hundred thirty-nine, pursuant to (a) Act of Congress approved June 17, 1902, (32 Stat. 388), and Acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law; (b) Act of Congress approved April 8, 1936 (49 Stat. 115), designated the Emergency Relief Appropriation Act of 1935; (c) Act of Congress approved June 22, 1936 (49 Stat.

1597), designated the First Deficiency Appropriation Act, fiscal year 1936; (d) Act of Congress approved August 9, 1938 (50 Stat. 564, 597), designated the Interior Department Appropriation Act, 1938; (e) Act of Congress approved August 26, 1937 (50 Stat. 844, 850), entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," and (f) Act of Congress approved May 9, 1938 (52 Stat. 291), between THE UNITED STATES OF AMERICA, hereinafter referred to as "United States", acting for this purpose by Harry Slattery, Under Secretary of the Interior, hereinafter referred to as the "Secretary", and MADERA IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of [fol. 56] California, pursuant to "the California Irrigation District Act" and acts amendatory thereof or supplementary thereto, with its principal place of business at Madera, California, hereinafter referred to as "District":

WITNESSETH:

2. WHEREAS, the United States contemplates the construction of the Central Valley Project, California, and as features thereof (a) the construction of a certain dam and appurtenant works for the storage and diversion of certain waters of the San Joaquin River, which dam and the reservoir created thereby will be respectively known as and designated "Friant Dam" and "Friant Reservoir", and (b) the construction of certain canals for the purpose of diverting and conveying water from the reservoir created by Friant Dam, which said canals are designated as "Madera Canal" and "Friant-Kern Canal"; and

3. WHEREAS, the arid or semi-arid lands within the District are in need of a supplemental water supply for use thereon; and

4. WHEREAS, the District has heretofore formulated and adopted a project with the object in view of making available to such lands a supplemental water supply, which project contemplates the construction by the District of a dam on the San Joaquin River located upon the same premises

upon which the United States now proposes and intends to construct said Friant Dam; and

[fol. 57] 5. WHEREAS, the District has condemned, purchased or contracted to purchase certain lands necessary for the construction of said dam by the District, which said lands are also necessary for the construction of said Friant Dam by the United States, and the District has further engaged in and conducted certain important litigation which has resulted in a definition of particular water rights on the San Joaquin River; and

6. WHEREAS, in connection with such project, the district has also made certain filings with the Division of Water Resources of the Department of Public Works of the State of California, pursuant to the Water Commission Act (Chapter 586, Statutes of 1913, as amended) to appropriate certain of the unappropriated waters of the San Joaquin River, which said filings have been continued in full force and effect by the District and are now in good standing before said Division of Water Resources; and

7. WHEREAS, the United States desires to acquire from the District such property and water rights hereinabove in paragraphs five (5) and six (6) mentioned; and

8. WHEREAS, the District is willing to sell and convey to the United States such property and rights as herein provided in the expectation that said Madera Canal to extend from the Friant Dam to a point on Ash Creek, a branch of the Chowchilla River, and of the capacity herein specified, will be constructed and completed for service substantially [fol. 58] concurrently with completion of construction of said Friant Dam and Reservoir, and that a supplemental water supply from said dam and reservoir through said canal will be made available to the District; and

9. WHEREAS, the United States recognizes that the District, in contracting to transfer and surrender to the United States its properties and rights hereinabove referred to, is relying upon the District being entitled to purchase a supplemental supply of water from Friant Dam and Reservoir (to be made available through Madera Canal), as hereinafter defined, and the United States desires to give to the

District assurance that, when the Central Valley Project is ready for operation and water is available from said Friant Dam and Reservoir, the District shall be given opportunity to purchase from said reservoir for delivery through said Madera Canal such a supplemental water supply for use upon lands within the District as now constituted and the District desires to have it understood that it contemplates contracting hereafter for such a water supply; and

10. WHEREAS, under the conditions aforesaid, the property herein agreed to be sold will no longer be necessary to be retained for the uses and purposes of the District, and therefore the District is authorized to dispose of same pursuant to the authority contained in Section 29 of "the California Irrigation District Act", as amended, and in Section 2 of the Act approved May 5, 1917, Statutes of [fol. 59] California, 1917, Chapter 160, as amended;

11. NOW, THEREFORE, it is agreed by and between the parties hereto as follows, to-wit:

Properties and Rights to be Conveyed to United States

12. The District hereby agrees to grant, bargain, sell, convey and confirm unto the United States, its successors and assigns forever, free of lien or encumbrance, all the following described property and rights:

Real Property:

(a) Lands comprising the Friant dam site, including the following parcels:

1. Lots 13, 17, 18 and 19 in Section 5 of Township 11 South, Range 21 East, M.D.B. & M., Fresno County, California.

2. Lots 2, 3, 9, 10, 11, 12 and 20 in Section 5, Township 11 South, Range 21 East, M.D.B. & M., Madera County, California, containing 174.93 acres, more or less, subject to a 100 foot right-of-way comprising 2.49 acres, more or less, in favor of Minarets and Western Railway Company across lots 11 and 20.

(b) Gravel bearing lands lying adjacent to the San Joaquin River in Fresno County, California, about a mile and a half below the Town of Friant and particularly described as follows:

1. In Section 18, Township 11 South, Range 21 East, M. D. B. & M.; Lot 2, excepting the south 332 [fol. 60] feet thereof; Lot 8, excepting the south 332 feet of the west 522.89 feet thereof.

2. In Section 13, Township 11 South, Range 20 East, M.D.B. & M.; Lot 10, excepting 1½ acres in the northeast corner thereof; ALL of Lot 9; ALL of Lot 6; that portion of Lot 8 described as follows: Beginning at a point on the north line of Lot 8, south 89° 12′ west, 114.1 feet from the east quarter corner of Section 12, Township 11 South, Range 20 East, M.D.B. & M.; thence south 55° 18′ west 1452.5 feet more or less to a point on the west line of Lot 8; thence northerly to the northwest corner of Lot 8; thence north 89° 12′ east along the north line of Lot 8 to the point of beginning.

3. In section 24, Township 11 South, Range 20 East, M.D.B. & M; Northwest Quarter of Northeast Quarter; All of Lot 11.

Containing 190.24 acres, more or less.

WATER RIGHTS:

(c) Except as hereinafter stated: All right, title and interest of the District in and to all water rights, and all of its rights to the use of water of whatsoever kind or nature, whether rights by appropriation, prescription or by virtue of said District's ownership of riparian lands in to and upon, and from the San Joaquin River, its tributaries, channels and sloughs, including the ordinary and extraordi- [fol. 61] nary flows thereof, together with the right as against said District, and as against said District only, its successors and assigns, to impound, store and divert all of said water for use within or without the watershed of said river. It is the intention of the District by this contract to agree to grant, bargain, sell, convey, and confirm unto the

United States all of the District's right, title and interest of every kind and character in and to any of the waters of, and its right to store, divert and use, and as against said District, and as against said District only, the right to store, divert and use within or without the watershed of said river, any of the waters of the San Joaquin River, including its tributaries, channels and sloughs, but excluding those tributaries which drain into said river below Mendota Dam, located in Section 19, Township 13 South, Range 15 East, M.D.B. & M.

Said rights agreed to be conveyed include but are not limited to the rights acquired by virtue of the following applications of the District to appropriate water from the San Joaquin River, on file with the Division of Water Resources of the State of California, pursuant to the provisions of the Water Commission Act, (Chap. 586, Statutes 1913, as amended);

Application Number	Date of Filing	Amount of Direct Flow Second Feet	Amount of Storage—Acre Feet
234	Jan. 19, 1916	3,000	500,000
1465	Sept. 26, 1919	3,000	500,000
2792	Mar. 13, 1922	9,000	600,000

[fol. 62] In connection with the conveyance and transfers of the above described property, the District hereby agrees, to the extent it owns or controls such data, to make available to the United States through the Secretary of the Interior or his authorized representative, any engineering data and other data desired by said Secretary bearing on the suitability of the dam site and gravel beds, and sufficiency of title thereto, and bearing on the extent and validity of title to the water rights agreed to be conveyed.

Conveyance of and Payment for Properties and Rights

13. (a) The District shall execute and acknowledge in the proper manner a deed in the form annexed hereto marked Exhibit A, describing the properties and rights herein agreed to be conveyed and designating the United States as grantee; and shall, within 15 days after written notice

that this contract has been executed for and on behalf of the United States deliver said executed deed in escrow to the Madera Branch, Bank of America National Trust and Savings Association, California. Said deed shall be held as an escrow (1) to be delivered to the United States within fifteen (15) days after the Secretary has given written notice to the District that the United States will proceed wih actual construction of all or a portion of said Friant Dam, and said Madera Canal within a period of six (6) months thereafter, or (2) to be redelivered to the District in the event this contract is terminated as hereinafter [fol. 63] provided. Expenses incidental to escrowing said deed shall be borne by the District.

(b) The United States hereby agrees, on the terms herein expressed, to purchase the properties and rights agreed to be conveyed for the sum of Three Hundred Thousand Dollars ($300,000.00). Payment of said sum shall be made, as follows:

(i) By payment within ninety days from and after delivery of said deed to the United States of such sum (but not in excess of said consideration) as may be necessary to pay the balance due, if any, of the purchase price agreed to be paid by the District, as Vendee or condemnor, to the Vendors of the lands described in subdivisions (a) and (b) of Article 12 hereof; and

(ii) In the event the District shall, subsequent to the delivery of the deed as herein provided, furnish the United States with a certified copy of a resolution of its Board of Directors, reciting that the District desires a part or all of the balance of said consideration remaining after making the payment, as provided for in paragraph (i) above, to be paid to it for the purpose of defraying the cost of procuring and installing facilities for the distribution of water to the lands within the same, then the United States shall, within ninety days from and after the receipt of said certified copy of said resolution, pay to the District all of the balance of said consideration, or the portion thereof specified in said resolution.

[fol. 64] (iii) In the event any portion of said consideration is not absorbed in pursuance of the provisions of paragraphs (i) and (ii) above, then the same shall be credited to the District as an advance, to be applied in so far as it may go, in payment of charges, as they become due and payable by the District, for such supplemental water supply as it may purchase from the United States; *provided, however,* that in event the District shall furnish the United States with a certified copy of a resolution of its Board of Directors that it does not intend to contract with the United States for a supplemental water supply as provided by Subdivision (e) of Article Fourteen (14) hereof, then and in such event the balance of the purchase price due the District hereunder shall be paid to the District by the United States within ninety (90) days after the United States has been furnished with the said copy of said resolution.

(iv) All apyments required to be made by the United States by the provisions of this agreement shall be made to the District by United States warrant or disbursing officer's check.

(c) In the event that the United States does not commence the construction of all or a portion of said Friant Dam and said Madera Canal within thirty-six (36) months after the District has delivered the executed deed to the [fol. 65] escrow holder as above provided, the District may at its option and at such time as it may so desire, declare this contract terminated and ended, whereupon all rights and obligations of the parties hereunder shall terminate, and thereupon the deed shall be delivered up to the District for cancellation. If the deed has been delivered to the United States, the United States will, if and when so provided by Act of Congress, reconvey to the District all of the properties herein described upon repayment to the United States that part of the purchase price theretofore paid to District. Said termination by the District of this contract shall be effected by depositing a written notice of exercise of such option in the United States Post Office in the City of Madera, County of Madera, State of Califor-

nia, postage prepaid, directed to the Secretary of the Interior, Washington, D. C.

(d) The United States agrees that the Madera Canal feature of the Central Valley Project will be constructed from the said Friant Dam to a point on Ash Creek, a branch of the Chowchilla River, above the confluence of Ash Creek and Berenda Slough, and completed for service substantially concurrently with the completion of construction of said Friant Dam and Reservoir, and will have a normal initial capacity of not less than 1000 cubic feet per second, with not less than normal capacities throughout its length progressively diminished in proportion to the acreage to be served by the respective sections of the said canal, and with waste way facilities adequate in the opinion of the Secre- [fol. 66] tary to render the operation of the canal practicable and safe, provided that each closed structure in said canal shall have a capacity 50% in excess of the normal capacity of the canal immediately below the said structure.

(e) If and when the said Friant Dam and Reservoir shall be utilized for storage and diversion of water to Friant-Kern Canal, the said Madera Canal shall contemporaneously therewith be made available to carry to the District that portion of the water to which the District may be then entitled.

Right of District to Acquire Supplemental Water Right

14. (a) The District shall be entitled, as hereinafter provided, to purchase a supplemental supply of water from Friant Dam and Reservoir (to be made available for service through the Madera Canal and measured at the points of delivery along said canal) in an average annual supply up to, but not exceeding, 270,000 acre feet, which at the option of the District shall include up to, but not to exceed fifteen per centum (15%) of the total amount of "Class One Water" as herein defined.

(b) "Class One Water" shall, as it is tentatively fixed, mean and include the first eight hundred thousand (800,000) acre feet of water per annum which can be made available through the operation of the Central Valley Project by and

through the Friant Dam and Reservoir at points along the Madera and Friant-Kern Canals. Further announcement [fol. 67] as to the amount of water to comprise "Class One Water" shall, however, be made by the Secretary at or prior to the time the notice to the District provided for in Subdivision (e) of this article is given. Said "Class One Water" shall be primarily for use as a stable and dependable surface supply to be delivered at points along said canals, with seasonal distribution, so far as practicable in accordance with the irrigation requirements of all such purchasers. Contracts for "Class One Water" shall be for a fixed percentage of the available supply and each contractor will each year be entitled to, and pay for, such percentage of the available total supply of "Class One Water".

(c) "Class Two Water" shall mean and include all water which can be made available through the operation of the Central Valley Project by and through the Friant Dam and Reservoir at points along the Madera and Friant-Kern Canals other than and in excess of "Class One Water". Said "Class Two Water" is intended primarily, but not exclusively, for use in augmenting and recharging underground storage. Contracts for "Class Two Water" shall entitle each contractor to a fixed percentage of the total of "Class Two Water" at any time available and shall fix the extent to which the contractor shall pay for the water contracted for and available to him if not fully used.

(d) Contracts for water shall be subject to a set of regulations to be issued by the Secretary prior to the execution [fol. 68] of any such contracts, which regulations shall among other things set out how project waters flowing into Friant Reservoir shall be reserved for the fulfillment of "Class One Water" contracts, including the right of hold-over storage; how the available storage capacity shall be utilized for serving "Class One Water", "Class Two Water", and flood control; the standard seasonal distribution of "Class One Water" deliveries and permissible variations; minimum and maximum limitations for rates of delivery of "Class Two Water"; charges for "Class One Water" and "Class Two Water" and times of payment therefor and for revisions thereof from time to time; disposition of sur-

plus project water not being used by contractors for "Class One Water" and Class Two Water"; and extension, amendment, and revision of such regulations.

(e) Whenever the United States shall be prepared to furnish service for irrigation or other purposes from Friant Reservoir and at a date not later than that upon which water shall be offered for sale to any prospective water user, the United States shall notify the District in writing relative to the availability and character of such service, and shall define the classes and quantities of service then and thereafter to be made available and the respective prices and methods of payment therefor. The District shall have six (6) months from the date of receipt of said notice within which to contract for the purchase of water on the basis of the classes and quantities of service so offered to [fol. 69] the District; provided, that, having due regard for the District's procedure required or expedient in negotiating for and securing approval of such contract, the Secretary may grant such extensions of time as he deems desirable. It is mutually understood between the parties hereto that it is not possible at this time to fix a price to paid by the District for said water, but the United States agrees that the cost of said water to the District shall not exceed charges made to others than the District for the same class of water and service from the said Friant Dam and Reservoir.

(f) It is understood and agreed that the District may, at its option, at any time prior to the execution of the contract covering the sale of and delivery to the District of a supply of water from Madera Canal as herein contemplated, exclude from the District not to exceed 40,000 acres of the present area thereof, and may include not to exceed 10,000 acres at present outside the boundaries of the District.

Effect If Breaches of Contract

15. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

Responsibility for Interruptions

16. In the event the performance, in whole or in part, of the obligations of the respective parties under this contract, is hindered, interrupted, or prevented by war, strikes, lockouts, fire, act of God, or by other similar or different acts [fol. 70] of civil or military authorities, or by any cause beyond the control of the respective parties hereto, whether similar to the causes herein specified or not, the obligations of the respective parties under this contract shall be suspended to the extent and for the time that performance thereof is prevented or affected by such hindrance, interruption or prevention, but due diligence shall be observed by the respective parties hereto, so far as lies in their power, in performing their respective obligations under this contract.

Contingent upon Appropriations

17. If the operations of this contract extend beyond the current fiscal year or exceed in volume the amount of money made available for its completion through appropriation by Congress, or allotments under the provisions of the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (49 Stat. 115), it is understood that this contract is made contingent upon Congress making the necessary appropriations or upon the necessary allotments being made under the Emergency Relief Appropriation Act of 1935, for expenditures hereunder after such current year has expired or after such previous appropriation or allotment has been exhausted. In case such appropriation or allotment as may be necessary to carry out this contract is not made, the District hereby releases the United States from any and all liability arising from or due to such appropriation or allotment not being made.

[fol. 71] *Covenant Against Contingent Fees*

18. The District warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul the contract, or in its discretion to deduct

from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractors for the purpose of securing business.

Officials Not to Benefit

19. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Successors and Assigns Bound

20. This contract shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto, including but not limited to any successor of the United States, in and to the ownership or operation of Friant Dam and Reservoir or Madera Canal, or both.

IN WITNESS WHEREOF, the parties hereby, to their respective officers thereunto duly authorized, have caused this [fol. 72] contract to be executed in duplicate, the day and year first above written.

THE UNITED STATES OF AMERICA,

By Harry Slattery
Under Secretary of the Interior

MADERA IRRIGATION DISTRICT,

By J. A. Secara
President

Attest:

Harry Barnes
Secretary

(SEAL)

[fol. 78] [File endorsement omitted]

[fol. 79] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

[Title omitted]

ANSWER OF DEFENDANT, THE PEOPLE OF THE STATE OF CALIFORNIA, AND ANSWER OF THE DEFENDANT WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA

Comes now the Attorney General of the State of California and appears and answers for the People of the State of California, and for the Water Project Authority of the State of California, pursuant to the request of C. H. Purcell, Chairman of said Authority, by letter dated July 23, 1951, which letter was accompanied by a copy of the Resolution of the Water Project Authority, dated March 27, 1951, both of which are attached hereto and marked Exhibits "A" and "B" respectively, and are referred to and incorporated in this answer as if set forth at length herein, and alleges in behalf of said defendants as follows:

I.

That the State of California is one of the United States of America; that this answering defendant appears in the sovereign governmental, and proprietary capacities of [fol. 80] said State, in its own interest and for the protection of its own rights; also as *parens patriae*, in the interest of and for the protection of all its citizens, residents, landowners and water users, and its agency, the plaintiff district, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust, hereinafter described which trust relates to the use of water in the Central Valley Project hereinafter mentioned; also as absolute owner of the corpus of the water to be used in and by said Central Valley Project and as owner of the right of reversion of any rights to the use of such water which may be forfeited or otherwise terminated for nonuse or otherwise; and as trustee for the use and benefit

of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project certain waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which waters will be commingled and used for the purposes of said project. That the Water Project Authority of the State of California is a body politic and corporate organized and existing under the laws of the State of California and is a State agency concerned with the construction, operation and maintenance of the Central Valley Project.

II.

Allege that Central Valley Project is a multiple-purpose [fol. 81] project designed and planned for the general purposes of irrigation of arid lands in the Great Central Valley of California, improvement of navigation, river regulation, flood control, incidental development of hydroelectric power, repulsion of salt water within the delta of the Sacramento and San Joaquin Rivers, and other purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin Rivers, and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial purposes, of the water of the Sacramento and San Joaquin Rivers and their tributaries, that said waters arise, flow and discharge into the Pacific Ocean wholly within the State of California; that there are no public lands of the United States in said Great Central Valley; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set out and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said legislature requiring the preparation and submission of said reports; that said bulletins are hereby referred to and incorporated by reference in this answer.

[fol. 82] III.

Allege that by act of its Legislature adopted August 5, 1933 and effective January 13, 1934 (California Statutes 1933, p. 1042) the State of California authorized the construction of the Central Valley Project and created a state agency designated "Water Project Authority of the State of California," and authorized said Authority to construct, maintain and operate said project and to use therefor the proceeds of sale of certain state bonds authorized by said Act; that following the adoption of said Act it became and was impracticable for the state to sell said bonds and construct the project; that by the Acts of Congress designated the Emergency Relief Appropriation Act of 1935 and the Rivers and Harbors Act of 1935, by executive orders signed by the President September 10, 1935, and November 16, 1935, a finding of feasibility signed by the Secretary of the Interior and approved by the President December 2, 1935, and the Acts of Congress designated the Rivers and Harbors Act of 1937, and the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, Public Law No. 356, 81st Congress, first session, and the Act of Congress approved September 26, 1950, Public Law 839, 81st Congress, second session, the Secretary of the Interior was authorized to construct said Central Valley Project and has undertaken and entered upon the construction of said project; that certain features of said project have been constructed and others are ap-
[fol. 83] proaching completion of construction.

IV.

Allege that the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plant, and appurtenances thereof;

(2) Contra Costa Conduit, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(3) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said Delta Cross-Channel to the Mendota Pool in the San Joaquin River;

(4) Friant Dam and reservoir on the Upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant reservoir southerly to a point on Kern River near Bakersfield.

V.

Allege that the contract dated July 27, 1939, between the United States and the San Joaquin and Kings River [fol. 84] Canal and Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract", and mentioned in Article 10 (d) of the contract, which is sought to be validated in plaintiff's complaint herein, and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriative and prescriptive rights; contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by them to use for irrigation and other purposes, waters of the San Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Canal; that the United States entered into all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San

Joaquin River arising above said reservoir and divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal; for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; [fol. 85] that it is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the same through the Madera Canal for irrigation of the lands in plaintiff district.

VI.

Allege that the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, heretofore filed certain applications with the Division of Water Resources of the Department of Public Works of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said Statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes, and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River at points of diversion [fol. 86] located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No.

5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10, S.R. 21E. M. D. B. & M. and at Friant Dam for irrigation, domestic and flood control purposes, that a true copy of said assignment dated September 3, 1938, is hereto attached, marked Exhibit "C" and a true copy of said assignment dated September 30, 1939, is hereto attached, marked Exhibit "D" and said copies are by reference made a part hereof.

VII.

Allege that the State of California has not assigned to the United States, nor to anyone, any of the applications to appropriate water on the tributaries of the Sacramento and San Joaquin Rivers, hereinabove mentioned, except as specified in application 9364, referred to in paragraph VI hereof.

VIII.

Allege that by virtue of the terms of said assignments [fol. 87] the State of California has become and is the trustor or grantor of an express trust; the United States has become and is the Trustee of that trust; the landowners to acquire rights to the use of water from the works of the Central Valley Project, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 10 (d) of the contract herein sought to be validated, and similar or comparable contracts, and under the assignments, Exhibits "C" and "D" hereto are held by the United States as such trustee under said express trust and as a part of a trust fund or res for the use and benefit of the Central Valley Project and the landowners to acquire rights to the use of water from the works of said project, and in particular the landowners of plaintiff district; that the

State of California, as trustor or grantor and as *parens patriae*, is entitled to be heard, among other things, as to all matters relating to the administration and execution of said trust by said trustee and entitled to require that the trustee administer said trust according to its true intent and meaning.

IX.

Allege that said Central Valley Project will provide a stabilized source of supplemental water-supply for irrigation and other purposes for many hundreds of thousands of acres of land now under cultivation and irrigation in the [fol. 88] Great Central Valley of California; that the construction, operation and maintenance of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing more than half of the cultivated agricultural lands of the State; that twenty or more contracts between the United States of America and irrigation and water districts organized under California law, generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that questions of law and fact identical with or similar to those involved in the case at bar have been and will be presented in said future validation actions; that the original cost estimate of the Bureau of Reclamation, made in 1936, for the construction of said Central Valley Project was $170,000,000; that the last official estimate disclosed by the Bureau of Reclamation for the cost of construction of said Project, made in January, 1950, was $581,886,000; that said last estimate is believed to include the cost of the American River Development which was added to said project by Act of Congress adopted October 14, 1949, but does not include the cost of the Sacramento Valley Canals added to said project by Act of Congress adopted September 26, 1950; that the estimate of cost of said Sacramento Valley canals made by the Bureau of Reclamation in May, 1949, was from $40,000,000 to [fol. 89] $65,000,000; that said Secretary and said Bureau of Reclamation seek and have, by official report to Con-

gress, recommended the expansion of said Central Valley Project to include units and features in addition to those now authorized for construction by the Congress, which said Bureau estimates will cost in excess of $3,000,000,000; that said expanded Central Valley Project is generally described and outlined in the report of said Bureau entitled "Central Valley Basin," being Senate Document 113, Eighty-first Congress, first session, to which reference is hereby made; that the construction, operation and maintenance of said expanded Central Valley Project would profoundly affect the economy and welfare of the owners of several million acres of land, now irrigated or unirrigated, in the Great Central Valley of California, and of several millions of the citizens, residents, landowners and water-users of the State.

X.

Allege that the United States is one of the parties defendant described in the caption of plaintiff's complaint and in paragraph II of said complaint, and is a party to this action.

XI.

Allege that the validity of the contract marked Exhibit "A" to the complaint does not depend on whether the United States has rights to the water to be delivered by it pursuant to the contract or rights to the use thereof or title or [fol. 90] ownership thereto; and further that an adjudication of such rights to water or the use thereof or title or ownership thereto is not appropriate in this proceeding; and that to attempt or purport to make such an adjudication herein would be contrary to the best interests of the State and of the United States; and further, there are appended hereto true copies of correspondence between the Secretary of the Interior of the United States and the Attorney General of the State of California consisting of three letters as follows: letter dated March 5, 1951, signed by Oscar L. Chapman, as Secretary of Interior, marked Exhibit "E"; letter dated March 22, 1951, signed by Edmund G. Brown, as Attorney General, marked Exhibit "F"; letter dated March 27, 1951, signed by Oscar L. Chap-

man as aforesaid and marked Exhibit "G". That aforesaid Exhibits are hereby referred to and incorporated in this answer as if set forth at length herein.

Wherefore, the State ~~of California~~ prays as follows: (1) that the plaintiff district's legal capacity and authority to enter into the contract, the proceedings on the part of the district for the authorization of the execution of the contract, and the execution of the contract between the Madera Irrigation District and the United States be confirmed and declared valid; and (2) that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the [fol. 91] State of California or of its agencies, including but not limited to the Madera Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or all or any of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved in the Central Valley Project.

And Wherefore, the Water Project Authority which is not taking any position on the validity of the contract between the Madera Irrigation District and the United States, prays that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the State of California or of its agencies including but not limited to the Madera Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or any or all of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved in the Central Valley Project.

Edmund G. Brown, Attorney General, State of California, B. Abbott Goldberg, Deputy Attorney General, Attorneys for People of the State of California and for the Water Project Authority of the State of California.

[fol. 92] EXHIBIT "A" TO ANSWER OF DEFENDANT, ETC.

EARL WARREN
GOVERNOR

WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA

PUBLIC WORKS BUILDING
TWELFTH AND N STREETS
SACRAMENTO 5 CALIFORNIA

Chas G. Johnson
State Treasurer

C. H. Purcell
Director of Public Works

Thomas H. Kuchel
State Controller

James S. Dean
Director of Finance

Edmund G. Brown
Attorney General

A. D. Edmonston, State Engineer
Executive Officer

Address All Communications to Executive Officer.

July 23, 1951

Honorable Edmund G. Brown
Attorney General
State Building, Civic Center
San Francisco, California

Attention: Mr. B. Abbott Goldberg

Dear General Brown:

Your letter, dated July 13, 1951, to Mr. A. D. Edmonston, Executive Officer of the Water Project Authority, with reference to participation by the Authority in the contract validation proceeding brought in the Superior Court of Tulare County by the Saucelito Irrigation District has been brought to my attention. I have also been informed that a similar action for validation of contract has been brought by the Madera Irrigation District in the Superior Court for that County.

[fol. 93] In view of the action taken by the Water Project Authority at its regular meeting held on March 27, 1951, instructing the Attorney General to take such action as may be appropriate to protect the interests of the State of California and the Water Project Authority in a proceeding entitled "Ivanhoe Irrigation District vs. All Parties and Persons, Etc." it is requested that you enter an appearance in each of the new proceedings on behalf of the State and the Water Project Authority in conformance with the position already taken in the Ivanhoe case.

A copy of the resolution adopted by the Water Project Authority on March 27, 1951, is enclosed.

Very truly yours,

C. H. PURCELL
C. H. PURCELL
Chairman

Encl.

EXHIBIT "B" TO ANSWER OF DEFENDANT, ETC.

WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA

PUBLIC WORKS BUILDING
TWELFTH AND N STREETS
SACRAMENTO, CALIFORNIA

CHAS G. JOHNSON
STATE TREASURER

C. H. PURCELL
DIRECTOR OF PUBLIC WORKS

THOMAS H. KUCHEL
STATE CONTROLLER

[fol. 94] JAMES S. DEAN
DIRECTOR OF FINANCE

EDMUND G. BROWN
ATTORNEY GENERAL

A. D. EDMONSTON
STATE ENGINEER
EXECUTIVE OFFICER

Address all Communications to Executive Officer.

Resolution Adopted by the Water Project Authority at Regular Meeting held on March 27, 1951

WHEREAS, there is now pending in the Superior Court of the State of California in and for the County of Tulare, a proceeding entitled "Ivanhoe Irrigation District vs. All Parties and Persons, Etc.," said proceeding being numbered 39627 in said Superior Court for the purpose of validating a contract entered into between said District and the United States for the delivery of water and construction of distribution facilities; and

WHEREAS, by order of said Court in said proceeding dated March 8, 1951, a default of all persons, excepting those who had filed appearances in said proceeding, was set aside so far as the Water Project Authority of the State of California was concerned, said order granting this Authority the opportunity of appearing in said proceeding if it be so disposed; and

WHEREAS, in said proceeding contentions have been made to the effect (1) that the title to the water proposed to be delivered to the Ivanhoe Irrigation District by the United States, acting by and through the Bureau of Reclamation [fol. 95] of the Department of the Interior, and the right of the State to require compliance with State law with reference to the obtaining of proper permits to appropriate said water and the rights of the State to impose and enforce conditions respecting methods of diversion and use of said water, all as provided by State law, are necessarily involved in the proceeding now pending, and (2) that a validation of the contract before the Court might supersede or impair the powers of the State with regard to the matters above mentioned; and

WHEREAS, the Attorney General of the State of California has expressed himself to this Authority that in his opinion a validation of the contract involved in the proceeding would have no effect whatever upon the title to the water proposed to be delivered to said District or to any other water acquired or to be acquired for purposes of the Central Valley Project or upon any other of the matters above mentioned, and that said matters are not in any way

involved in said proceeding; and that it is his intention to file in said proceeding an additional amendment to the answer therein specifically alleging and asserting the contentions involved in the aforesaid opinion, and requesting that the Court shall include in any final decree rendered in the said proceeding a clear and specific statement that the matters above mentioned are not therein involved and are not passed upon therein; and

WHEREAS, the Attorney General has received letters dated [fol. 96] March 5 and March 27, 1951, from Honorable Oscar L. Chapman, present Secretary of the Interior of the United States, expressing a like view, copies of said letters having been furnished to this Authority and included in its files; and

WHEREAS, any doubt as to whether the matters herein specified are involved in said proceeding can and should be resolved by specific declaration of the Court in any decree rendered therein that such matters are not involved and are not passed upon, or determined.

NOW, THEREFORE, BE IT RESOLVED BY THIS AUTHORITY, that the Attorney General be and he is hereby requested on behalf of this Authority to take such action as may be appropriate in the premises to protect the interests of the State of California and of this Authority by making every possible effort to the end that any final decree rendered in the above mentioned proceeding shall clearly and specifically state that the matters above mentioned are not involved in said proceeding and are not passed upon therein.

EXHIBIT "C" TO ANSWER OF DEFENDANT, ETC.

ASSIGNMENT

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An Act authorizing the Department of Finance to appropriate waters in connection with the utilization and con- [fol. 97] servation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign

such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State," approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Application Nos. [fol. 98] 5625 and 5626; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Applications Nos. 9364 and 9365; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the Act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the Act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the Act approved July 15, 1935, being Chapter 462, Statutes

of 1935, page 1518, provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any [fol. 99] such water necessary for the development of such county; and

WHEREAS, The United States of America is now engaged in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the waters of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder:

NOW, THEREFORE, in pursuance of the discretion and judgment vested in it by the aforesaid Act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid applications Nos. 5625, 5626, 9364 and 9365, and such appropriations

[fol. 100] of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by The United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to The United States of America, and its assigns, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or [fol. 101] initiated thereunder, subject to depletion of the stream flow above Shasta (formerly Kennett) Dam by the exercise of lawful rights to the use of water for the purpose of development of the counties in which such water originates, whether such rights have been heretofore or may be hereafter initiated or acquired, such depletion not to exceed in the aggregate four million five hundred thousand (4,500,000) acre-feet of water in any consecutive ten-year period, and not to exceed a maximum depletion in any one year in excess of seven hundred thousand (700,000) acre-feet.

In witness whereof, the Department of Finance of the State of California, acting by and through the Director

of Finance, has caused this assignment to be executed this 3rd day of September, A. D. nineteen hundred thirty-eight.

DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA

By ARLIN E. STOCKBURGER
Director of Finance.

(SEAL)

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

On this 3rd day of September, A. D. nineteen hundred thirty-eight, before me, R. N. Philpot, a Notary Public in and for the said County and State, personally appeared Arlin E. Stockburger, Director of Finance of the State of California, known to me to be the Director of Finance of the State of California, the Department of the State of Cali- [fol. 102] fornia that executed the within instrument, known to me to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. N. PHILPOT
Notary Public in and for said County and State.

(NOTARY SEAL)

My Commission expires
NOVEMBER 25, 1940

EXHIBIT "D" TO ANSWER OF DEFENDANT, ETC.

ASSIGNMENT

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated [fol. 103] plan for the utilization or conservation of the water resources of the State," approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof, which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the San Joaquin River, designated therein as Applications Nos. 5637 and 5638; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, that certain

application for permit to appropriate unappropriated [fol. 104] waters of the San Joaquin River, designated therein as Application No. 9369; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518 provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

WHEREAS, The United States of America is now engaged in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the [fol. 105] State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5637, 5638 and 9369, and such appropriations of the waters of said river as were made thereby and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder;

NOW, THEREFORE, in pursuance of the discretion and judgment vested in it by the aforesaid act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the develop- [fol. 106] ment, utilization or conservation of the water resources of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by the United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to the United States of America, to be exercised by and through its Bureau of Reclamation, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder.

IN WITNESS WHEREOF, the Department of Finance of the State of California, acting by and through the Director of Finance has caused this assignment to be executed this 30th day of September, A. D., nineteen hundred thirty-nine.

DEPARTMENT OF FINANCE OF THE
STATE OF CALIFORNIA,

[fol. 107]

PHIL S. GIBSON
Director of Finance,

BY: GEORGE KILLION
GEORGE KILLION
DEPUTY.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On this 30th day of September, A. D., nineteen hundred thirty-nine, before me, LOIS K. DAUBE a Notary Public in and for the said County and State, personally appeared George Killion, Deputy Director of Finance of the State of California, known to me to be the Deputy Director of Finance of the State of California, the Department of the State of California that executed the within instrument, known to me to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

LOIS K. DAUBE
Notary Public in and for
said County and State.

My Commission expires
JULY 16, 1942

CERTIFICATE 4555
APPLICATION .....
PERMIT .....
LICENSE .....

STATE OF CALIFORNIA)
DEPARTMENT OF PUBLIC WORKS) *ss.*
DIVISION OF WATER RESOURCES)

[fol. 108] I, Timothy C. Cronin, Certification Clerk of the Division of Water Resources, Department of Public Works, State of California, do hereby certify that I have carefully compared the photostatic copy of assignment to which this certificate is attached, with the original of said assignment in the records of the Division of Water Resources, Department of Public Works, State of California and that the same is a true, full, complete and correct copy of the original thereof on file in this office.

WITNESS my hand and seal of the Department of Public Works State of California, this 13th day of October, 1950.

TIMOTHY C. CRONIN
Certification Clerk, Division of Water Resources.

EXHIBIT "E" TO ANSWER OF DEFENDANT, ETC.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

March 5, 1951
Air Mail

My dear General Brown:

I am glad to be able to give you my views on certain questions which you have conveyed to me orally through Chief Deputy Attorney General Levit concerning the effect of validation proceedings under California law upon the resolution of water rights questions under State and Federal law.

I have discussed these questions with our attorneys and, [fol. 109] as we understand them, we are in accord with your views. As I understand it, the purpose and effect of a validation proceeding, which is required by Federal Statute and permitted under the California statutes, is merely to obtain a judicial decree confirming the authority of the district to enter into the particular contract with the United States and thereby confirming the validity of the contract, just as in the case of a bond validation proceeding. Questions with respect to the historical, present, and future ownership of water or water rights would seem to me to be immaterial to the question whether a particular contract for water service or for the construction of a distribution system, or both, is a valid one and to the question of the authority of the district to enter into it. In short, I do not understand that a finding that the contractual obligations are valid is determinative of the title to the water.

If this is true, then it follows that any controversy with respect to whether "ownership" of the water which the United States contracts to furnish to the district is in the United States, the State, or elsewhere (a controversy which to me would seem to be wholly unnecessary as a practical matter in any event) would not appear to be for resolution in a proceeding for the validation of a contract.

Furthermore, the resolution of the question whether an individual water user or a district may have a legal right to demand the continued delivery of project water after the [fol. 110] expiration of the 40-year term of a water service contract clearly is not affected by a finding that the contract itself is binding *during* its own express term.

As for rights to the use of water which have already vested and which are recognized under State law, it is elementary that they cannot be adversely affected by the operations of the United States without just compensation.

These views, I am informed, were expressly stated by counsel for the Bureau of Reclamation during oral argument on the demurrer to the complaint in the Ivanhoe Irrigation District proceeding, in which they appeared as amici curiae.

I hope that I have adequately responded to your inquiry and I and Washington and Sacramento representatives of the Bureau of Reclamation will be glad to cooperate with you in any further way we can.

Sincerely yours,

(SGD) OSCAR L. CHAPMAN
Secretary of the Interior

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California.

Copy to: Regional Director, Sacramento, Calif.
Regional Counsel, Sacramento, Calif.

[fol. 111] EXHIBIT "F" TO ANSWER OF DEFENDANT, ETC.

STATE OF CALIFORNIA

EDMUND G. BROWN
ATTORNEY GENERAL

BERT W. LEVIT
CHIEF DEPUTY ATTORNEY GENERAL

H. H. LINNEY
CHIEF ASSISTANT ATTORNEY GENERAL
Division of Civil Law

ARTHUR H. SHERRY
CHIEF ASSISTANT ATTORNEY GENERAL
Division of Criminal Law and Enforcement.

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

March 22, 1951

Honorable Oscar L. Chapman
Secretary of the Interior
United States Dept. of the Interior
Washington 25, D. C.

Dear Mr. Secretary:

I have not yet had an opportunity to acknowledge your letter of March 5, relative to the pending validation suits, and do so now.

Your letter correctly states my views with respect to the purpose and effect of these proceedings, and I am glad to note that you concur. However, I should appreciate a further expression from you concerning the scope and effect of the contracts themselves, which, of course, are the basis [fol. 112] of the validation proceedings; and in particular, I refer to the so-called water service and distribution system contract, between the United States and the Ivanhoe Irrigation District which is now before the Superior Court of Tulare County for validation.

It is my view that this contract is not intended to and does not deal with, determine, or settle any questions with respect to the historical, present or future claims of ownership of water or water rights that are now or that may hereafter be urged by the United States the State of California, the Ivanhoe Irrigation District, or individual or corporate landowners or users of the water, the furnishing of which is provided for by the said contract.

Statement of your views on this additional matter will be appreciated. It is understood, of course, that the contract, if confirmed, will itself obligate the United States to furnish and entitle the District and the landowners to receive certain quantities of water in the circumstances and upon the terms and conditions therein recited, and nothing stated in this letter (or concurred in by you, if you do concur,)

is meant to disparage, limit, or modify in any way any of the provisions contained in the said contract.

Yours very truly,

EDMUND G. BROWN
ATTORNEY GENERAL

EGB:AS

[fol. 113] EXHIBIT "G" TO ANSWER OF DEFENDANT, ETC.

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

March 27, 1951

My dear General Brown:

In your letter of March 22 you have expressed certain views concerning the scope and effect of the water service and distribution system contract between the United States and the Ivanhoe Irrigation District, for which a validation proceeding is now pending in the Superior Court of California in and for the County of Tulare, and you have requested my opinion on the accuracy of those views.

I am in agreement with what I understand to be your views, and, for reasons which will be set forth, I do not regard either the validation proceeding or the contract itself as affecting the ownership of water or water rights.

As you know, the Central Valley Project supply from which the Bureau of Reclamation will furnish irrigation and municipal water to contracting entities is derived from two sources: (1) certain applications for appropriations filed with the California Division of Water Resources by the State Director of Finance and assigned by him to the United States pursuant to section 10504 of the California Water Code, as well as certain applications for appropriations which have been filed directly by the United States with the State Division of Water Resources, pursuant to [fol. 114] Section 8 of the Reclamation Act of 1902, and (2) contracts with and deeds from a large number of individuals and corporations, by which the United States has

acquired rights with respect to the water of the San Joaquin River. Principal in the latter category is the so-called purchase and exchange contract with Miller and Lux, Inc.

The United States, in turn, under the authority of section 9 (e) of the Reclamation Project Act of 1939, is entering into contracts with districts organized under California law by which it agrees to furnish certain amounts of project water to the districts for a period of 40 years on certain conditions and at defined rates. I cannot conceive that these contracts in any way raise, involve, or resolve any questions with respect to the ownership of water or water rights. When the contracts have been decreed to be valid and binding the districts have enforceable rights to demand that certain quantities of water be furnished to them by the United States in accordance with the terms of the contracts, and the United States has enforceable rights to collect payments from the districts in accordance with the terms of the contracts.

More specifically, it is the view of the Department that the position of an irrigation district or a landowner in the Central Valley Project with respect to the ownership of water or water rights is no different from what it would have been had the State of California pursued its original [fol. 115] plan to construct and operate the Central Valley Project through the State's Water Project Authority, and to deliver water to the districts under the form of long-term contract then proposed. As I already have pointed out, the sources of the project water supply are in transactions which took place pursuant to and in accordance with the law of California.

Sincerely Yours,

(Sgd.) Oscar L. Chapman
Secretary of the Interior.

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California.

[fol. 189] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

ANSWER OF WARREN OCHELTREE, ET AL. TO THE SECOND AMENDED COMPLAINT—Filed February 1, 1952

Come now Warren Ocheltree and Clarice A. Ocheltree, his wife, Mansel Ocheltree, Althea A. Ocheltree, his wife, Jerold Ocheltree, Hazel O. Ocheltree, Phillip Albonico, and Jane E. Albonico, his wife, as parties in interest, including the ownership of land and water and water rights within the Madera Irrigation District and/or other rights involved within the issues herein, and without waiving our several or joint special and/or general demurrers heretofore made and filed herein, do hereby make and file this, our Answer to the Second Amended Complaint of the Madera Irrigation District, and pray that this Court declare the rights and duties of the parties and determine the issues raised in said Second Amended Complaint and by the Demurrers herein and raised by this Answer, and [fol. 190] in connection with said Second Amended Complaint and this Answer, admit, deny and allege as follows:

I

That each of these answering Defendants is the owner of real property within the boundary of the Madera Irrigation District; that said real property has been assessed by the Madera Irrigation District ever since the organization of that district and these answering Defendants respectively and their respective predecessors in interest have paid said assessments; that the respective properties of these Defendants so owned by them and within the boundaries of said district are by the terms of the purported contract marked "Exhibit A" attached to the Second Amended Complaint made liable for the obligations of the Madera Irrigation District to the United States and said lands will be assessed by said district and these Defendants will respectively be required by said district to pay said assessments; that the individual land holdings of each of these answering Defendants are described on the assess-

ment rolls of the Madera Irrigation District as is more particularly set forth on "Exhibit I," attached hereto, for each of these answering Defendants, respectively.

II

Admit the allegations set forth in paragraph I of the second amended complaint.

III

Deny generally and specifically each, all and every of [fol. 191] the allegations, except as hereinafter admitted or alleged, set forth in paragraphs II, III, IV, V and VI of said Second Amended Complaint.

IV

Admit that the Board of Directors of the Madera Irrigation District claim to have, on or about the 14th day of May, 1951, signed a purported contract, a copy of which is set forth and attached as "Exhibit A" to said Second Amended Complaint.

V

Admit that said document "Exhibit A" attached to the plaintiff's Second Amended Complaint was by said Board of Directors of said Madera Irrigation District submitted to the California Districts Securities Commission for its examination and report, and admits that on or about the 26th day of March, 1951, the California Districts Securities Commission made its report with reference to said document, "Exhibit A" attached to said Second Amended Complaint, but in this connection these Defendants allege that said report was not an approval of said purported contract marked "Exhibit A" as such, but was the method adopted by said Districts Securities Commission to enable the court in this validation proceeding to pass upon the regularity or irregularity of said contract and its various terms and provisions.

VI

Admit that a purported contract, purporting to bear the [fol. 192] date of the 24th day of May, 1939, and assigned

symbol and number I.L.R.-1126, and entitled "Contract for Purchase of Property and Water Rights," is set forth as "Exhibit B" attached to the Second Amended Complaint, but in this connection these Defendants allege that any property or property rights allegedly conveyed, assigned or transferred by the Board of Directors of the Madera Irrigation District, or the Madera Irrigation District, to the United States pursuant to said purported contract marked "Exhibit B" were and are subject to the provisions of a trust as hereinafter more particularly set forth.

VII

Admit that on or about the 18th day of April, 1951, the Board of Directors of Madera Irrigation District purported to call and hold a special election as of May 9th, 1951, and that the Board of Directors of said District did cause a notice, of which "Exhibit C" attached to the Second Amended Complaint of the plaintiff is a true and correct copy, to be published in a newspaper published in the County of Madera, and in that regard these Defendants allege the fact to be that said notice was and is defective, incomplete, and that said election was improperly and illegally called and that no approval of said purported contract marked "Exhibit A" resulted from said purported special election and/or the votes cast thereby at said time or at any time, among other things and among other reasons, in that said notice did not and does not contain the information and data required to be contained in said [fol. 193] notice by the provisions of the laws of the State of California.

By Way of Further Answer and by Way of Separate Affirmative Defenses, These Defendants Allege as Follows:

VIII

That the Madera Irrigation District was organized under the California Irrigation District Act on or about the 12th day of January, 1920, and ever since has been an irrigation district duly organized and existing under the laws of the State of California. That during all of said time the owners including these answering defendants and their

predecessors in interest of the land lying within said irrigation district, as the boundaries existed from time to time, were assessed for and paid assessments to acquire for the use and benefit of said land, including the lands of these Defendants, as said area then existed, water rights and real property and other properties, and in particular the ground, land and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and materials for the construction of said dam, together with rights of way and easements and water rights and filings upon the waters that would be and are now being impounded behind Friant Dam; that the rights in and to said waters and said dam site and other aforementioned property were acquired by said Madera Irrigation District and the Board of Directors thereof as trustee for all of the land owners within the boundaries of said district as beneficiaries of [fol. 194] said trust.

IX

That in the month of May, 1939, the then Board of Directors of said District purported to make and enter into the agreement, the words, terms and figures of which are set forth as "Exhibit B" attached to the Second Amended Complaint herein. That said purported contract was not submitted to the electorate or the voters or the landowners within said District, including these answering Defendants and/or their predecessors in interest, and was made without their knowledge and/or consent. The said purported contract was not submitted to the Districts Securities Commission of the State of California, and/or approved by said Districts Securities Commission of the State of California. That said purported contract, without the knowledge or consent of the land owners within said District, including these answering Defendants and their predecessors in interest, purported to sell, transfer and convey to the United States the right, title and interests of the Madera Irrigation District as trustee and of the said landowners as beneficiaries of the said trust, heretofore set forth, in and to the property and water and water rights acquired by said District as heretofore set forth.

X

That at the time and place of the purported execution of the purported contract marked "Exhibit B" attached to the Second Amended Complaint herein, the United States, [fol. 195] its officers, agents, servants and employees, then and there well knew or then and there should have known that said property and water and water rights therein purportedly conveyed were held by the said Madera Irrigation District and the said Board of Directors thereof, in trust for all of the landowners within the boundaries of said District as beneficiaries of said trust; that any right, title or interest, if any, which the United States acquired under or by virtue of said purported contract marked "Exhibit B" in and to the said property and/or water and/or water rights is held in trust by the United States for the benefit of all of said landowners, including these answering Defendants and/or their predecessors in interest, whose lands comprised the area within the Madera Irrigation District as of the date of said purported contract or document designated as "Exhibit B."

XI

That at the time of the acquisition of the said property by the said Madera Irrigation District as more particularly described in paragraph VIII hereof, the said water rights and real property and other properties and in particular the ground, land and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for the construction of said dam, together with rights of way and easements and water rights and filings upon the waters that would be and now are being impounded behind Friant Dam, were necessary for District [fol. 196] purposes, that at the time of the purported execution of said purported contract marked "Exhibit B" the said property and water and water rights were then, and now are, necessary for District purposes.

XII

That subsequent to the purported execution of the purported contract marked "Exhibit B" and prior to the

purported execution of the purported contract marked "Exhibit A" the Chowchilla Water District was on the 9th day of February, 1949, duly organized under the provisions of the California Water District Act and at all times since that 9th day of February, 1949, is, and has been, a legally authorized and organized water district under the laws of the State of California; that there was contained within the boundaries of the said Chowchilla Water District, then so organized, forty-three thousand four hundred fifty four and sixty eight hundredths (43,454.68) acres within the boundaries of the Madera Irrigation District; that petitions for exclusion of the said 43,454.68 acres within the Madera Irrigation District were duly filed by the owners of said lands with the Madera Irrigation District; that subsequent thereto and by action of the Board of Directors of the Madera Irrigation District the said 43,454.68 acres were excluded from the Madera Irrigation District; that on the 24th day of August, 1949, the Madera Irrigation District executed an assignment to the Chowchilla Water District of an average annual supply of 52,000 acre feet of water to which the Madera Irrigation District was purportedly en- [fol. 197] titled pursuant to said purported contract marked "Exhibit B," which said quantity of water was the proportionate quantity of water to which the said 43,454.68 acres of land was entitled pursuant to the purported contract marked "Exhibit B"; that the said assignment was accepted and approved by the Secretary of Interior of the United States on the 16th day of September, 1949, and was consented to by the said Chowchilla Water District; that the said Madera Irrigation District did further transfer and pay to the said Chowchilla Water District the pro rata portion of the assets of the Madera Irrigation District represented by the said 43,454.68 acres of land.

That thereafter and on the 12th day of December, 1950, petitions for exclusion of 23,600 acres of land were filed with the Madera Irrigation District; that filed with said petitions for exclusion was the request on behalf of petitioners that the Board of Directors of the Madera Irrigation District express by resolution their willingness to assign to said lands their pro rata share of the water rights which belong to said lands under the provisions of

"Exhibit B," and further that the said Board of Directors of the Madera Irrigation District express by resolution their willingness to assign to a water district to be formed of these lands a due pro rata share of the assets of the Madera Irrigation District which said share is represented by the proportion of the assessments paid to the District [fol. 198] by said lands petitioned for exclusion; that said 23,600 acres of land requesting exclusion from said Madera Irrigation District constituted a separable block of land with common types and characteristics, dissimilar in nature to the remaining lands of the District; that prior to the filing of said petitions for exclusion by said owners of said lands, the Districts Securities Commission of the State of California had found in their report dated October 2nd, 1950, that it was in the public interest that if said block of lands was excluded from the Madera Irrigation District that there should be preserved to them their pro rata share of the water to which the Madera Irrigation District was entitled pursuant to the terms of "Exhibit B" attached to Plaintiff's Second Amended Complaint on file herein; that thereafter the Board of Directors of the Madera Irrigation District excluded approximately 19,500 acres of said land from the Madera Irrigation District but failed and refused to express their willingness to assign the pro rata share of water to be delivered to the Madera Irrigation District pursuant to the terms of "Exhibit B" of Plaintiff's Second Amended Complaint on file herein and refused to express their willingness to transfer to a district to be formed of said lands so excluded the pro rata share of the cash assets of the Madera Irrigation District; that at all times since the exclusion of the said lands the said Board of Directors of the said Madera Irrigation District has failed, neglected and refused to transfer the said water rights or cash [fol. 199] assets of the said Madera Irrigation District, or to express their willingness to do so.

That these answering Defendants are informed and believe and allege upon information and belief that some secret agreement has been made between the United States and the Board of Directors of the Madera Irrigation District relative to the water rights appurtenant to said nineteen thousand five hundred acres, and the consideration

otherwise applicable to said nineteen thousand five hundred acres, emanating from said "Exhibit B" hereinbefore referred to; that at the time that the said Board of Directors of the Madera Irrigation District and the said United States entered into said alleged secret agreement and/or at the time that the Board of Directors of the Madera Irrigation District and the United States purported to execute the purported agreement entitled "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, the Madera Irrigation District and the Board of Directors thereof held the water rights appurtenant to the said nineteen thousand five hundred acres hereinbefore referred to in trust for said lands and the owners thereof; that any rights that the United States acquired or purported to acquire pursuant to said purported contract marked "Exhibit B" hereinbefore referred to, were and are as to the said nineteen thousand five hundred acres held in trust for said lands or the owners thereof; that by the provisions of "Exhibit A" attached to Plaintiff's Second Amended Com- [fol. 200] plaint on file herein the Board of Directors of the Madera Irrigation District purported to relinquish to the United States that quantity of wate. which was held in trust by said Board of Directors and by the said Madera Irrigation District for the said nineteen thousand five hundred acres of land; that such transfers and/or agreements or purported transfers and/or purported agreements, are void as to the owners of said nineteen thousand five hundred acres of lands and any rights now held or had by the Madera Irrigation District and/or the United States are held in trust for the benefit of the said nineteen thousand five hundred acres.

XIII

That said purported contract marked "Exhibit A" attached to the Second Amended Complaint is unconstitutional, void, illegal and defective, among other things, for the following reasons:

1. That prior to the purported execution of the purported contract marked "Exhibit B" and the purported contract marked "Exhibit A" the Madera Irrigation District held

as trustee for all of the landowners within the boundaries of said District, as said District was then constituted, by their filings to appropriate water from the San Joaquin River and other sources, a permanent water right; that said purported contract marked "Exhibit B" together with said purported contract marked "Exhibit A" purports to divest from the said Madera Irrigation District as [fol. 201] trustee for all of the landowners within the said District said permanent water right and to substitute in its place only a temporary and not a permanent water right; that said substitution of said temporary water right for said permanent water right constitutes a breach of trust and a deprivation of property of the said landowners without due process of law and without just compensation; that the interest of all of said landowners within the boundaries of said District, including these answering Defendants and their predecessors in interest, prior to the purported execution of said purported contract marked "Exhibit B" and said purported contract marked "Exhibit A," in said permanent water rights as beneficiaries of the said trust was a present, existing and valuable property right.

2. That said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, is so indefinite and uncertain as to be lacking in mutuality and is without sufficient settled terms and conditions as to constitute a contract in that said contract fails to indicate and specify the provisions of the Federal Reclamation Law that are to be considered as a part of said contract and fails to eliminate the Reclamation Laws of the United States and the provisions of said Federal Reclamation Laws that are not to apply to said contract and said contract fails to set forth the Reclamation Laws or other laws of the United States that are to apply to the operation of the Central Valley Project.

[fol. 202] 3. That the provisions of article 26 of said purported contract marked "Exhibit A" are illegal and void in that they constitute an unlawful delegation of power of the Board of Directors of the Madera Irrigation District.

4. That the provisions of articles 28, 29, and 30 of said purported contract marked "Exhibit A" are unlawful, unconstitutional and illegal, and are not subject to enforcement, among other reasons, in that said provisions are unworkable, impractical and impossible of performance.

5. That prior to the purported execution of said purported contract marked "Exhibit B" and said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein; these answering Defendants and each of them were the owners of and were entitled to their pro rata share, for all of the lands of said answering Defendants and/or their predecessors in interest of the water and water rights owned and held by said Madera Irrigation District; that each of these answering Defendants owns lands within the boundaries of said Madera Irrigation District which are "excess lands" as said term is described in article 30 (a) of said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein; that the provisions of articles 28, 29 and 30 of said purported contract marked "Exhibit A" are unlawful, unconstitutional and illegal in that they purport to deny to said answering Defendants "excess lands" said lands' pro rata share of the water [fol. 203] distributed by the said Madera Irrigation District, which said deprivation constitutes a breach of the trust heretofor (sic) alleged and the taking of property without due process of law and without just compensation.

6. That the failure to designate by the terms of said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, which of the Federal Reclamation Laws are applicable to said purported contract and which of the said Federal Reclamation Laws are not applicable to the said purported contract, and the placing by the terms of said purported contract in the said Bureau of Reclamation and Department of Interior the power to designate which of the said Federal Reclamation Laws are applicable or are not applicable, constitutes an unlawful delegation of power by the Board of Directors of the Madera Irrigation District.

XIV

That the provisions of said purported contract marked "Exhibit A" and as the same incorporates and depends upon said purported contract marked "Exhibit B," is illegal, invalid and contrary to the laws of the State of California in that said purported contract does not give or purport to give, but, in fact, purports not to give, a water right appurtenant to the lands within said District, which lands are to use said water, and does not give and purports to deny to said lands any permanent water right, [fol. 204] and limits said water right to a period of forty years, contrary to the laws of the State of California and to the Federal Reclamation Laws of the United States.

XV

That the purported terms and provisions of said purported contract marked "Exhibit A" set forth in article 4 on page 6 of said exhibit as attached to the Second Amended Complaint, which purport to recognize the right of the lands within the said District to a permanent and perpetual and appurtenant water supply, are indefinite and uncertain and do not constitute any provision relative to the making of a future contract in recognition of said rights and if said provisions are so intended, they are devoid of the necessary terms and conditions for renewal.

XVI

That said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, is illegal, unconstitutional and void, among other respects, in that the provisions of article 4 of said "Exhibit A" are invalid and contrary to the rights and interests of the Madera Irrigation District and the landowners therein, including these answering Defendants, and constitute a breach of the trust heretofore alleged and the taking of property without due process of law and without just compensation, in that they provide that said purported contract marked "Exhibit A" shall constitute full satisfaction of the District's rights under article 14 of [fol. 205] said purported contract marked "Exhibit B"

whereas said purported contract marked "Exhibit A" is for a limited term and the rights provided for and contained in said purported contract marked "Exhibit B" are perpetual and appurtenant to the land, and provide further that the use of the water supplied to the said District pursuant to the terms of said purported contract marked "Exhibit A" is limited in its application and its scope by reason of articles 28, 29 and 30 thereof, whereas said purported contract marked "Exhibit B" does not in any way limit the use or distribution of the water to be supplied to the said District pursuant to said terms of said purported contract marked "Exhibit B."

XVII

That heretofore the State of California, through the Director of Finance, and pursuant to legislative mandate, did file upon the waters that will be impounded behind Friant Dam and will be delivered to this and other districts. That said filing was made for the benefit of all of the lands contained within the Madera Irrigation District; that the Director of Finance of the State of California purported to make an assignment of said filings to the Department of Interior and the United States of America and that any such rights as the United States of America, the Department of Interior and/or the Bureau of Reclamation may have in and to said water and water rights is that of [fol. 206] a trustee for the benefit of all of the landowners within the Madera Irrigation District as beneficiaries. That said filings are subject to and inferior to the filings owned and had by these Defendants and the other landowners within said Madera Irrigation District upon said San Joaquin River and other sources of water or storage behind Friant Dam. That the landowners within said District are the real owners and beneficiaries of said filings and water rights; that the purported contract herein purports to take away such rights from said landowners, rather than recognizing or vesting said rights, and said provisions are unlawful and constitute the taking and depriving of the property of these Defendants without due process of law and/or payment of just compensation, and a breach of the trust heretofore alleged.

XVIII

That prior to the time of the purported execution of said purported contract marked "Exhibit B" attached to Plaintiff's Second Amended Complaint on file herein, and during the time of the negotiation of the terms of said purported contract, the officers, agents, servants and employees of the United States and more particularly of the Department of Interior and Bureau of Reclamation, represented to the Board of Directors of the Madera Irrigation District as it was then constituted, that the excess land limitation provisions of the Federal Reclamation Law would not be applicable to said purported contract marked "Exhibit B" or any contract executed between the United [fol. 207] States and the Madera Irrigation District in compliance or partial compliance with the terms of said purported contract marked "Exhibit B"; that said Board of Directors of the said Madera Irrigation District, as it was then constituted, relied upon said representations and believed them to be true; that said officers, agents, servants and employees of the United States intended that the said Board of Directors rely on said representations and believe them to be true; that said representations were made by said persons to induce the said Board of Directors to execute the said purported contract marked "Exhibit B" and to transfer to the United States the property, property rights, water and water rights more particularly described in said purported contract marked "Exhibit B"; that but for said representations by said persons the said Board of Directors of the said Madera Irrigation District would not have executed the said purported contract marked "Exhibit B" and would not have transferred the said valuable prope ty (sic) and property rights and water and water rights to the United States.

That prior to the execution of the purported contract marked "Exhibit A" attached to the Plaintiff's Second Amended Complaint on file herein, and during the negotiations of the terms of said purported contract, the Board of Directors of the Madera Irrigation District, as it was then constituted, demanded that in compliance with the representations theretofore made by the said officers, ser- [fol. 208] vants, agents and employees of the United States

in respect to said excess land limitation provisions, that the said United States delete from the terms of the said contract under negotiation the excess land limitation provisions and more specifically paragraphs 28, 29 and 30 of the said purported contract marked "Exhibit A"; that the United States through its contracting officers and its officers, agents, servants and employees, and in spite of the said representations theretofore made, refused to delete the said excess land limitation provisions from the said purported contract and refused to execute any contract for the supply of surface irrigation water for the lands of the Madera Irrigation District without the incorporation therein of the said excess land limitation provisions and the said paragraphs 28, 29 and 30 of said purported contract marked "Exhibit A"; that the said officers, agents, servants and employees of the United States informed the Board of Directors of the Madera Irrigation District as it was then constituted during the negotiation of the terms of the purported contract marked "Exhibit A" attached to the Plaintiff's Second Amended Complaint on file herein, that unless they executed a contract substantially in the form of the said purported contract marked "Exhibit A" and containing the said excess land limitation provisions as set forth in paragraphs 28, 29 and 30 of said purported contract marked "Exhibit A", that within six months from the date of receipt of a notice as described in article 14 (e) of the [fol. 209] said purported contract marked "Exhibit B" that the said Madera Irrigation District would not be entitled to execute a contract pursuant to the terms of said paragraph 14 of said purported contract marked "Exhibit B."

XIX

That the terms and conditions of the said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, relative to the excess land limitations as contained in paragraphs 28, 29 and 30, and the failure of said purported contract to extend to the District credit upon construction costs, and the further failure of said purported contract to specify what portion of the construction costs of the Central Valley Project are attributable to and to be paid by the said Madera

Irrigation District, and the failure of said purported contract to give to the said Madera Irrigation District or all of the lands located therein or any of the lands located therein, any permanent water right, are contrary to the terms of the purported contract marked "Exhibit B," and the imposition of said terms and conditions are without right and are in violation of the said purported contract marked "Exhibit B" if said purported contract is of any validity; that there was no additional consideration flowing from the United States to the Madera Irrigation District to support the imposition of said terms and conditions of the said purported contract marked "Exhibit B."

[fol. 210] XX

That the authorization and the reauthorization of the Central Valley Project of California as a reclamation project was and is a special act and not subject to the terms and conditions of the general reclamation laws, except as to the repayment of the costs thereof properly allocable to agriculture. That as authorized, said project was and is a special project, not subject to acreage limitations and other federal controls. That the attempt on the part of the United States to impose the use of the so-called 9e. contract under the Reclamation Act of 1939 is in direct violation of the authorization and reauthorization of said project, in that the method of repayment sought to be imposed by and through said purported contract marked "Exhibit A" is in violation of the repayment provisions of the Reclamation Law existing at the time of the authorization of the said project.

XXI

That said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, is invalid and void, among other things, in that the United States by and through the Bureau of Reclamation and/or Department of Interior, did not and have not, as required by the reclamation laws of the United States, ascertained, allocated and determined the costs of said Central Valley Project allocable to the various features thereof, including agriculture, and fixed and determined the amount

[fol. 211] to be paid by agriculture therefor, and did not and have not allocated as to the various units of said project the amount to be paid by each unit as allocable or allocated to agriculture and have not made public announcement thereof, either on an acreage basis or any other basis, and that the maximum cost allocable to agriculture for construction purposes as to the Madera Irrigation District has not been determined and/or announced, nor is any provision made in said purported contract marked "Exhibit A" in connection therewith. That no provision relative to repayment of said construction costs or credit for repayment thereon is made or provided for in said contract as required by the reclamation laws.

XXII

That the election notice "Exhibit C" attached to said Second Amended Complaint was and is defective, insufficient and void as an election notice in the following particulars, among other things:

A. Said election notice does not describe the property to be conveyed by the District to the United States, although said purported contract marked "Exhibit A" requires that, on the request of the contracting officer, the Madera Irrigation District must convey to the United States, without cost, the unencumbered fee simple title to any and all lands owned by it, or perpetual easements therein, required for right of way purposes for the distribution system; that at the time of the publication of said notice the Madera Irrigation District was and now [fol. 212] is, the owner of certain lands and easements in land connected with the water distribution system then and now in existence; that these answering Defendants are informed and believe, and upon such information and belief allege the fact to be, that at the time of publishing said notice it was and now is the plan and intention of the Board of Directors of the Madera Irrigation District and said Madera Irrigation District to convey to the United States the fee simple title to said lands and the perpetual easements owned by it in connection with the distribution system then and now in existence.

B. That said election notice does not state the maximum amount of the construction costs relative to the major works nor anything as to the maximum amount to be paid by the district upon said construction costs (apart from said distribution system).

C. That said purported contract marked "Exhibit B" in conjunction with said purported contract marked "Exhibit A" calls for the conveyance of property of the district to the United States, and in calling said election an attempt was made to vote upon and ratify said purported contract marked "Exhibit B" without any reference whatever to the description of the property or the consideration or the construction costs or the other matters required to be contained in such a notice, nor was there in such notice any reference to said contract of 1939.

[fol. 213] XXIII

That said purported contract marked "Exhibit A," when considered in connection with the provisions of the Irrigation Districts Federal Cooperation Law of California, makes said purported contract marked "Exhibit A" and its terms and provisions invalid and void, among other things, in the following particulars:

A. That said contract does not provide for, but negatives a permanent or appurtenant water right to the landowners within said irrigation district, whereas, the laws of the State of California and the United States require such water right to be permanent and appurtenant.

B. That the acreage limitation provisions contained in said purported contract marked "Exhibit A" are illegal and void in that the enforcement of the same would constitute the taking of private property without due process of law and without payment of just compensation and would result in the confiscation of private property and the prohibiting of the landowners from realizing the full and fair value thereof in any sale, notwithstanding requiring said landowners to pay the costs of said project and to pay assessments upon said real property, while depriving said landowners of the use of said project and a supply of water therefrom.

C. That the terms and provisions of said purported contract marked "Exhibit A" are contrary to the water laws of the State of California and are in direct violation of the [fol. 214] vested rights of these Defendants.

D. That said purported contract marked "Exhibit A" purports, with the provisions of said Cooperative Act, to delegate to the Congress of the United States and to the Secretary of Interior of the United States the power in the future to enact laws of Congress and to pass rules and regulations dealing with the substantive property rights of the landowners within the Madera Irrigation District without limitation and constitutes an attempt by the legislature of California to delegate to the Congress of the United States and/or to the Secretary of Interior the legislative and law making powers of the State of California.

E. That said purported contract is indefinite and uncertain, and when considered in the light of the provisions of said Irrigation Districts Federal Cooperation Law, is indefinite and uncertain and as such is lacking in mutuality and in the sufficiency of language, terms and conditions necessary to constitute a contract in that said contract is silent upon the following matters and leaves the following matters entirely to the determination of the Secretary of Interior and the agents and representatives of the Department of Interior and Bureau of Reclamation; that the attempted and purported execution of said purported contract marked "Exhibit A" in that connection is invalid as to the landowners within the Madera Irrigation District by virtue of the fact that through the application of the pro- [fol. 215] visions of the Reclamation Law and the silence of said purported contract marked "Exhibit A" on the subject and the resort to the provisions of said Irrigation Districts Federal Cooperation Law the following is accomplished:

1. The purported contract marked "Exhibit A" is silent upon the question of water rights, while it is now the known interpretation of the Secretary of Interior that said purported contract does not give, but in fact withholds from all of the landowners within the District any vested or permanent water right, all of which is contrary to the

Federal Reclamation Laws and the laws of the State of California.

2. Said contract is silent upon any credit upon construction costs (other than the distribution system), whereas the Federal Reclamation Law requires the landowners to repay the properiy repayable portion of the construction costs allocable to agriculture. That said purported contract marked "Exhibit A" is interpreted by the United States as not calling for or giving any credit on construction costs and not being a repayment contract.

3. That said purported contract marked "Exhibit A," by virtue of the lack of provisions therein and by resort to the provisions of the Irrigation Districts Federal Cooperation Law and by resort to certain federal reclamation laws, makes said contract subject to amendment, alteration and addition from time to time in the future at the will and [fol. 216] whim of the Congress of the United States and at the will and whim of the rule-making power of the Secretary of Interior, and would give to the Secretary of Interior the sole determination of any dispute and the conclusive determination of all matters relative to any controversy as to the interpretation of said contract.

XXIV

That said purported contract marked "Exhibit A" is ultra vires and beyond the power of the board of Directors of the Madera Irrigation District to execute with the terms and interpretation and conditions contended for by the District and the United States in the same respect that said purported contract marked "Exhibit A" is illegal, invalid, void and unconstitutional as hereinbefore more particularly set forth.

XXV

That said Irrigation Districts Federal Cooperation Law was and is invalid and unconstitutional, among other things, in the following particulars:

A. That said act as passed and as existing was and is special legislation, where general legislation could have

been passed, and without any intrinsic basis for the classification adopted.

B. That said act contains an unlawful delegation of the legislative powers of the State of California to the Congress of the United States.

[fol. 217] C. That said act contains an unlawful and unconstitutional adoption of the acts of Congress of the United States and of the rules and regulations of the Secretary of Interior to be made in the future and without any recognized or lawful yardstick or sphere being designated.

D. That said act is indefinite and uncertain in that it purports to authorize the application of unknown and nonexistant (sic) law and the terms and provisions of unknown and nonexistant (sic) acts of Congress and rules and regulations of the Secretary of Interior and delegates to the Board of Directors of the Madera Irrigation District and the United States the power to, by contract, legislate with respect to the levying and controlling of the assessments and the distribution of waters of the State of California, contrary to the laws of the United States and the State of California, and said act purports to, and would if utilized, authorize and accomplish the writing into said purported contract marked "Exhibit A" of an authorization to the Congress of the United States and to the Secretary of Interior to amend, alter and add to the terms and provisions of said purported contract marked "Exhibit A" after its execution, and to thereby take and deprive the landowners within the Madera Irrigation District of their property without due process of law and/or payment of just compensation.

E. That the provisions of said Irrigation Districts Federal Cooperation Law in certain particulars are invalid [fol. 218] and illegal in that they incorporate by reference and without any identification, and adopt as applicable to the Madera Irrigation District, future rules and regulations of the Secretary of Interior in violation of the prohibition against the delegation of the legislative power of the State of California and in such manner as to make said purported contract marked "Exhibit A," if validated, subject to the affect (sic) of future congressional legislation

and future rules and regulations of the Secretary of Interior in such manner as to authorize and permit a unilateral amendment of said purported contract marked "Exhibit A" in accordance with the dictates of the Congress of the United States and the Secretary of Interior.

XXVI

That the sole and entire operations of the Madera Irrigation District in relation to the lands within the boundaries of the said district will be pursuant to and in conformity with the "Contract Between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System" (plaintiff's "Exhibit A" herein).

XXVII

That these answering Defendants are informed and believe and upon such information and belief allege the fact to be that the officers, agents, servants and employees of the Department of Interior and the Bureau of Reclama-
[fol. 219] tion plan and intend by the use of the rule-making power of the Secretary of the Interior to impose upon the land, lands, and landowners within the Madera Irrigation District the following controls directly affecting the vested property rights and interests of said landowners, to wit:

A. The imposition of the "family-size farm," limiting the use of the water to acreages of between 10 and not to exceed 160 acres in any one ownership.

B. The control of the use and application of water and the conditions under which said water can be utilized.

C. The price at which non-excess as well as excess land may be sold by the owners.

That while there is no term or provision contained or set forth in said purported contract marked "Exhibit A" authorizing the imposition of the aforementioned controls by the very absence of any term or provision defining or identifying the provisions of the Federal Reclamation Law to be applicable to said purported contract marked "Exhibit A" or defining or limiting the rule-making power of the Secretary of Interior with relation to the terms, cove-

nants, and conditions set forth in said purported contract marked "Exhibit A," the said purported contract marked "Exhibit A" therein fails to protect the lands and landowners within the Madera Irrigation District from the imposition of the said controls and conditions.

[fol. 220]

XXVIII

That sections 28, 29 and 30 of the purported contract marked "Exhibit A" attached to the Plaintiff's Second Amended Complaint on file herein constitute an unlawful and unconstitutional restraint and restriction upon the right to inherit or succeed to property and/or property rights; and that said provisions of said purported contract constitute an unconstitutional and unlawful restraint upon testamentary disposition of property and property rights.

XXIX

That the portions of the purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein which relate to the construction of the distribution system, as is more particularly set forth in Part B thereof, is invalid, illegal and void in the following particulars, among others, to wit:

A. That said provisions are indefinite and uncertain in that it cannot be ascertained from the provisions of said purported agreement what the United States agrees to build for the sum of $8,320,000 or the type, nature and extent of the lateral system to be constructed by the United States.

B. That there is a lack of mutuality in Part B of said purported contract in that the United States does not agree therein to perform or accomplish a specified result but only agrees to expend the sum of $8,320,000 or so much [fol. 221] thereof as the United States deems expedient or necessary, toward the construction of a distribution system, and that said distribution system shall be deemed completed within the meaning of said purported contract at such time as the United States shall notify the District in writing that the total expenditures have been made.

C. That the terms, covenants, and conditions set forth in Part B of said purported contract marked "Exhibit A," wholly fail to protect the interest of and the property rights of the landowners within the boundaries of the Madera Irrigation District and in this respect the execution of said purported contract constituted an abuse of discretion on the part of the said Board of Directors of the said Madera Irrigation District and was ultra vires and void.

XXX

That subsequent to the purported execution of the purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, the sole and entire operations of the Madera Irrigation District in relation to the lands within the boundaries of said District, including the lands of these answering Defendants, has been pursuant to and in conformity with the said purported contract marked "Exhibit A;" that the Board of Directors of the Madera Irrigation District have levied assessments upon all of the lands of these answering Defendants including the lands of these answering Defendants defined as "excess lands," which said assessments when collected [fol. 222] by the said Board of Directors of the said Madera Irrigation District have been paid to the United States and will be paid to the United States pursuant to the purported terms of the said purported contract marked "Exhibit A;" that these answering Defendants have paid all assessments levied upon their lands by the said Madera Irrigation District, but that in paying said assessments have not consented to nor acquiesced in the payment of the said funds derived by said assessments by the said Madera Irrigation District or the Board of Directors thereof, to the United States pursuant to the purported terms of the purported contract marked "Exhibit A;" that as to the "excess lands" of these answering Defendants as defined in said purported contract marked "Exhibit A," said assessments so levied by the said Madera Irrigation District were assessments without benefit to said lands and were therefore illegal, unconstitutional and void, and deprived these answering Defendants of property without

due process of law and without the payment of just compensation.

XXXI

That the purported execution by the Board of Directors of the Madera Irrigation District of the purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, was ultra vires and of no force and effect in that it constituted an act contrary to the objects and purposes for which the Madera Irrigation [fol. 223] District was formed, which object and purpose is to benefit all of the lands within the District by obtaining and distributing such water as may be necessary for the irrigation thereof, thus enabling each landowner within the District to have for his land the benefit of a common system of irrigation.

XXXII

That no consent to the purported provisions of the purported contract marked "Exhibit A" was given by these answering Defendants or any of them.

Wherefore, these answering Defendants pray for the following judgment and decree of this court:

1. That the purported contract marked "Exhibit A" herein is void, invalid, and of no force or effect for the following reasons:

A. That it constitutes an unconstitutional deprivation of private property without due process of law and without payment of just compensation.

B. That its purported execution by the Board of Directors of the Madera Irrigation District was an ultra vires act,

C. That its purported execution was a violation by the Board of Directors of the Madera Irrigation District and the officers of the United States of the trust herein alleged to exist.

D. That the purported notice of election, "Exhibit C" herein, was defective, incomplete and improper, and that

no approval of said purported contract resulted from the [fol. 224] election thereafter conducted.

E. That it is lacking in mutuality and is without sufficient settled terms and conditions as to constitute a contract.

F. That it constitutes an unlawful delegation of the powers of the Board of Directors of the Madera Irrigation District.

G. That it constitutes an unlawful delegation of the legislative powers of the State of California.

H. That its excess land limitation provisions are unworkable, impractical and impossible of performance.

I. That it does not give a water right appurtenant to any of the lands within the Madera Irrigation District.

J. That it does not give a permanent water right to any of the lands within the Madera Irrigation District.

K. That there is a lack of consideration for the additional burdens not provided for in the purported contract marked "Exhibit B," and the deprivation of benefits provided for in the purported contract marked "Exhibit B."

L. That its terms and provisions are contrary to the water laws of the State of California and the Federal Reclamation Laws.

M. That its terms and provisions constitute an unlawful restraint upon the right to inherit or succeed to property and the right of testamentary disposition.

2. That the Irrigation Districts Federal Cooperation Law of California is invalid and unconstitutional for the [fol. 225] following reasons:

A. That it is special legislation where general legislation could have been passed.

B. That it constitutes an unlawful delegation of the legislative powers of the State of California.

C. That it constitutes an unlawful delegation of the powers of the Board of Directors of an Irrigation District.

D. That it is indefinite and uncertain.

3. An adjudication and determination of the controversy between the parties hereto with respect to the interpretation and application of the federal reclamation laws that are or are not applicable to the Central Valley Project of California, and that are or are not applicable to the purported contracts marked "Exhibit A" and "Exhibit B."

4. An adjudication that the landowners within the Madera Irrigation District have had and do now have a vested and prior appurtenant and permanent water right to the waters of the San Joaquin River and its tributaries and the waters impounded and to be impounded behind Friant Dam superior in time and right to any right or interest of the United States.

5. That any property and/or property rights that the United States obtained from the Madera Irrigation District by virtue of said purported contract marked "Exhibit B" herein, are held in trust for the use and benefit of the said Madera Irrigation District and all of the lands and landowners therein.

[fol. 226] 6. That the Madera Irrigation District and the landowners therein are entitled to have the maximum cost to the Madera Irrigation District and its landowners of the construction costs of Friant Dam and Friant-Kern Canal and the other works used and useful in delivering water to the Madera Irrigation District determined and fixed, and that payments in excess of reasonable operation and maintenance costs be required to be applied in satisfaction of the Madera Irrigation District's share of those costs properly allocable to irrigation and which are to be raised by the landowners within said district.

7. An adjudication that no acts of the Congress of the United States and/or rules or regulations of the Secretary of Interior or Bureau of Reclamation either passed or adopted subsequent to the execution and validation, if validated, of the purported contract marked "Exhibit A" herein are or shall be applicable so as to change, alter or add to the obligations or detrimentally affect the rights

of the Madera Irrigation District and/or any of the landowners therein.

8. An adjudication that the property, property rights, water and water rights purportedly sold, transferred and conveyed from the Madera Irrigation District to the United States pursuant to the purported contract marked "Exhibit B" were, at the time of said sale, transfer and conveyance, and now are, necessary for Madera Irrigation District purposes.

9. That the lands and landowners of the 19,500 acres [fol. 227] excluded from the Madera Irrigation District as herein alleged are entitled to have transferred to them, or held in trust for them, their proportionate share of the assets of the Madera Irrigation District existing at the time of their exclusion, together with their proportionate share of the water and water rights to which the Madera Irrigation District was entitled pursuant to its purchases and filings, and/or pursuant to the terms of the purported contract marked "Exhibit B."

10. That the assessments on "excess lands" levied by the Madera Irrigation District and paid by these Defendants since the purported execution of the purported contract marked "Exhibit A" were without benefit to the said lands and were therefore illegal, unconstitutional, and void, and deprived these Defendants of property without due process of law and without the payment of just compensation.

11. Such other and further relief as may be meet and equitable in the premises.

Green, Green, Plumley & Kuney, and Horton & Knox, by Kenneth A. Kuney, Attorneys for the Defendants, Warren Ocheltree and Clarice A. Ocheltree, his wife; Mansel Ocheltree and Althea A. Ocheltree, his wife; Jerold Ocheltree; Hazel O. Ocheltree; Phillip Albonico and Jane E. Albonico, his wife.

[fol. 228] EXHIBIT "I" TO ANSWER OF WARREN OCHELTREE, ET AL.

* * * * * * * *

[fol. 232] JEROLD OCHELTREE, LANDS WITHIN MADERA IRRIGATION DISTRICT

Description	*Acres More or Less*
NW¼ of Sec. 4-13-17	161.44
SW¼ of Sec. 4-13-17	160.00
NE¼ of Sec. 4-13-17	161.44
SE¼ of Sec. 4-13-17	160.00

HAZEL O. OCHELTREE, LANDS WITHIN MADERA IRRIGATION DISTRICT

Description	*Acres More or Less*
Hughes Addition to City of Madera, the NE'ly 75 feet of lots 14 to 16 in Block 65 Fairvale Addition to Madera, all that portion of Lot 6 in Block 9, commencing at a point on the East line of said Lot 6 which point is where the North line of 5th Street, as extended, intersects said East line of said Lot, thence North 150 ft., thence West 125 ft., thence South 150 feet, and thence East 125 feet to the point of beginning	
All of Sec. 6-11-17	676.64

* * * * * * * *

[fols. 378-379]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

[Title omitted]

ANSWER OF DEFENDANT, THE STATE ENGINEER AND CHIEF OF THE DIVISION OF WATER RESOURCES, DEPARTMENT OF PUBLIC WORKS OF THE STATE OF CALIFORNIA TO SECOND AMENDED COMPLAINT—Filed June 26, 1952

Comes now A. D. Edmonston, as the State Engineer and Chief of the Division of Water Resources of the Department of Public Works of the State of California and appears and answers the second amended complaint of the plaintiff herein and alleges as follows:

I.

That the defendant, A. D. Edmonston, is the duly appointed, qualified and acting State Engineer and Chief of the Division of Water Resources, Department of Public Works, of the State of California.

II.

That the duties, powers, and jurisdiction vested in the Department of Public Works of the State of California in and by the Water Code of the State of California, and in particular in and by Division II thereof are administered [fol. 380] and exercised by and through the State Engineer.

III.

That this answering defendant is appearing herein pursuant to leave of court granted on the 29th day of April, 1952, to appear and take all appropriate action in this proceeding. That this answering defendant's authority and responsibilities are derived in part from and based upon Article XIV, Section 3, of the Constitution of the State of California as expressly declared and set forth in and by Section 1 of the Water Commission Act of the State of California, Statutes of 1913, Chapter 586, as amended by

Statutes of 1939, Chapter 838, the first two paragraphs whereof are now codified as Section 100 and Section 275 of the Water Code of the State of California, as amended.

IV.

That, as declared in Section 102 of the Water Code, all water within the State is the property of the people of the State but the right to the use thereof can be acquired by appropriation only upon compliance with the provisions of Division II of said Water Code of the State of California.

V.

That the Central Valley Project is a multiple-purpose project designed, planned and functioning for the general purposes of irrigation of arid lands in the Great Central Valley of California, and other purposes; that the Great Central Valley of California is the valley which lies in the [fol. 381] basin of the Sacramento and San Joaquin rivers, and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial purposes, of the water of the Sacramento and San Joaquin rivers and their tributaries, that said waters rise, flow and discharge into the Pacific Ocean wholly within the State of California; that there are no irrigable public lands of the United States within the service area of said Central Valley Project in said Great Central Valley; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set forth and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; That said bulletins and the reports contained therein are official documents of the executive department of the State of California and contain evidence material and relevant to this proceeding which the Court is required by law to judicially notice.

VI.

That said Central Valley Project was primarily designed to provide, and does and will provide a stabilizing source [fol. 382] of supplemental water supply for irrigation, and other purposes incidental thereto, on a vast acreage of lands now under irrigation, in the Great Central Valley of California, which lands without such supplemental water supply would have inadequate sources of supply; that the construction, operation, maintenance and management of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing several million acres of land comprising more than half of the cultivated agricultural lands of the State.

VII.

That the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant and Keswick Dam and power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plants, and appurtenances thereto;

(2) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said delta to the Mendota Pool on the San Joaquin River;

(3) Contra Costa Canal, a canal leading from the Sacramento-San Joaquin Delta to the vicinity of Martinez;

(4) Friant Dam and reservoir on the upper San Joaquin [fol. 383] River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant Reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant Reservoir southerly to a point on Kern River near Bakersfield;

(7) Folsom Dam and reservoir and hydroelectric power plant on the American River near the City of Folsom, with certain electric transmission lines leading from said power plant, and appurtenances thereto, and related works.

VIII.

That the Secretary of the Interior of the United States, by and through its Bureau of Reclamation, was authorized to construct the Central Valley Project in and by acts of Congress designated the Rivers and Harbors Act of 1937, the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, and Act of Congress approved September 26, 1950, and to operate and maintain the same and in particular to execute repayment contracts in order to recover to the United States Treasury the reimbursable cost of the project allocated to irrigation and assigned for return by the water users in accordance with the provisions of the Federal reclamation laws, as amended.

That the United States acting through the Secretary of the Interior and its Bureau of Reclamation, has substantially completed construction of such project (with except-
[fol. 384] tion of that portion thereof set forth in subsection (7) of paragraph VII hereof), and is now operating and maintaining the usable completed works of said project, and is required so to do, pursuant to said Federal reclamation laws.

IX.

That by contract dated July 27, 1939, between the United States and the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract", and mentioned in Article 10 (d) of the contract which is sought to be validated in plaintiff's complaint herein, and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by

them for use for irrigation and other purposes, in and to the water of the san (sic) Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Canal; that the United States entered into [fol. 385] all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San Joaquin River rising above said reservoir and to divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the same through Madera Canal for irrigation of lands in plaintiff district.

X.

That the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, prior to the filing of this proceeding filed certain applications with the State Engineer and Chief of the Division of Water Resources of the Department of Public Works of the State of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said statutes, the State of California, acting through its Department of [fol. 386] Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at

Shasta Dam for power purposes, and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10 S., R. 21 E., M. D. B. & M., and at Friant Dam for irrigation, domestic use and flood control purposes; that said assignments and said applications so assigned constitute official acts of the executive branch of the State of California which this Court is required by law to [fol. 387] judicially notice.

XI.

That by virtue of the terms of said assignments the State of California has become and is the trustor of an express trust; The United States has become and is the trustee of that trust; the landowners, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 4 and Article 10 (d) of the contract herein sought to be validated, and similar or comparable contracts, and by the assignments to which reference is made in Paragraph X hereof, are held by the United States as such trustee under said express trust and as a part of the trust fund or res for the use and benefit of the plaintiff district as the representative of the landowners therein, in order to, among other things, preserve to such landowners the right to ac-

quire permanent rights to the use of water from the works of said project pursuant to the laws of the State of California and of the United States; that the United States has not and will not own or have any right of ownership or title to any water of the State acquired or to be acquired for purposes of said project other than as such trustee; that unless such status and relationships are recognized to exist and are protected by this Court in its decision herein, the effect of said contract, if it be validated, will be [fol. 388] to create uncertainty and doubt as to those matters and will thereby cast doubt upon the authority and jurisdiction of this answering defendant to discharge its responsibilities under California law.

XII.

That the Secretary of the Interior in constructing, operating, and maintaining said project is under mandate from the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, to acquire any and all rights to the use of water required for project purposes pursuant to the laws of the State of California relating thereto, and in operating said project to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation; that the United States has acquired, and is proceeding to acquire appropriative and other rights of various characters to the use of water for purposes of said project, all solely as such trustee, and in delivering said water is required to do so solely as a carrier and distributor of such water to the beneficiaries of such trusts.

XIII.

That an adjudication of rights to the use of water to be delivered through the works of the Central Valley Project to the plaintiff district is not properly within the scope of the issues in this proceeding.

XIV.

That it is the expressed plan and objective of the Secre- [fol. 389] tary of the Interior that the use of water through-

out said Central Valley Project shall be governed exclusively by contracts pursuant to Section 9 (e) of the Act of Congress designated the Reclamation Project Act of 1939, which contracts are and will be generally similar or comparable to that portion of the contract herein sought to be validated relating to delivery of water; that 20 or more such contracts between the United States of America and irrigation and other types of water districts organized under California law, generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that considerations of law and facts identical with or similar to those involved in the case at bar will be presented in said future validation actions.

XV.

That the said contract sought to be validated in this proceeding does not provide for nor recognize the right to acquire a perpetual and appurtenant right to the use of water on the part of the plaintiff district and its landowners; that said contract does not, by its terms, and will not enable the district to secure any right to the use of said water to be delivered to it by the United States and applied to beneficial use by its landowners, appurtenant to their said lands; that said contract does not provide spe- [fol. 390] cifically for any credit to the district of any construction cost component in the rates provided to be paid by the district to the United States for said water so to be delivered; that said contract is not a repayment contract providing for the return to the United States treasury of the proportion of the construction cost obligation of said Central Valley Project allocated to irrigation and assigned for return by the said district, as provided for by the Federal reclamation laws; that the said contract sought to be validated herein may nevertheless be validated in this proceeding if construed as a temporary or interim contract upon the grounds that at the present time it may not be feasible or possible for the plaintiff district and the United States to determine upon the terms of and to enter upon and execute such repayment contract because of

additions of new units to the project which are under construction but not yet completed, and also because of units of said project which are authorized for construction but upon which construction has not commenced; that, being construed as a temporary or interim contract, there will be thereby preserved to the plaintiff district and the landowners therein the opportunity, at the proper time, to enter into such repayment contract whereby the plaintiff district and its landowners as beneficiaries under the express trust as hereinabove alleged may be assured of or acquire permanent rights to the use of water from the works of said project pursuant to the laws of the State of Cali-
[fol. 391] fornia.

Wherefore, this answering defendant prays as follows:

That in the event this Court validates the contract in issue in this proceeding, the decision and judgment of this Court recite and confirm: (a) That the United States has not and does not acquire any beneficial interest or right of ownership or title in and to any waters of the State of California for purposes of said project by virtue of or pursuant to this proceeding or by virtue of or pursuant to the contract as validated by this Court; (b) the trust status of the United States in relation to the subject matter of the contract, a portion of the waters of the State of California; (c) the beneficial interests of the plaintiff district and its landowners therein as beneficiaries of such trust; (d) the status of the State of California in respect to the water to be delivered pursuant to said contract and its powers in respect thereto; (e) that neither the contract nor the validation thereof shall preclude said district and its landowners from acquiring a perpetual supply of water, appurtenant to the lands irrigated to the extent beneficial use is made thereof subject only to the payment of lawful charges for the delivery thereof, and such conditions as are or may be in accordance with the laws of this State and of the United States applicable thereto; and further, (f) that this Court is not required to, does not, and does
[fol. 392] not purport to determine, define, limit or in any manner or at all, affect the powers and duties or authority

and responsibilities of this answering defendant under the laws of the State of California; and

For such other and further relief as may be proper in the premises.

Department of Public Works of the State of California, By A. D. Edmonston, State Engineer and Chief of the Division of Water Resources.

[fol. 423] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
September 15, 1953

In this proceeding the Madera Irrigation District, a water users' organization formed and existing under the laws of the State of California, seeks the validation of a purported contract dated May 14, 1951, between itself and the United States of America, acting by the Secretary of the Interior and the United States Bureau of Reclamation. The proceeding, pursuant to Section 23225 of the Water Code of the State of California, is in response to the provisions of Federal law and the contract making the effectiveness of any such contract dependent upon such validation. The proceeding is *in rem* and the decree entered herein will bind, among others, the landowners of all of the land within the Madera Irrigation District, and the State of California, [fol. 424] and every agency thereof; under Section 22680 of the California Water Code, the provisions of the contract are rendered inseparable and the judgment, therefore, must declare the contract either valid or invalid. The contract deals, among other matters, with the supplying of water from the works of the Central Valley Project by the United States Bureau of Reclamation to the District

limited to a period of 40 years, and purports to impose various conditions and obligations upon the District with respect to the use and disposition of such water. In these circumstances, it is necessary to a decision as to the validity of the contract that the respective relationships of the United States, the State of California, the District and its landowners, with respect to such water be considered and determined.

This proceeding was instituted by Madera Irrigation District by the filing of its complaint or petition on the 21st day of May, 1951, and by the publication of summons thereon. In response thereto the State of California and the Water Project Authority of the State of California by and through the Attorney General answered said complaint.

Eighty-six owners of land within Madera Irrigation District and two owners of land which had once been a part of Madera Irrigation District but which had been excluded therefrom, filed a general and special demurrer to the complaint on file. Upon a regularly noticed hearing on the said demurrers, the special demurrer was sustained with leave to the District to amend the complaint. Thereafter, [fol. 425] on the 16th day of October, 1951, Madera Irrigation District filed its first amended complaint and by leave of court on the 26th day of October, 1951, filed its second amended complaint and published summons thereon. By stipulation the answer of the State of California to the complaint was deemed to be the answer to the second amended complaint.

The eighty-six landowning defendants filed general and special demurrers to the second amended complaint, which said demurrers were duly set for argument on the 9th day of November, 1951. After the argument on the demurrers, upon stipulation of counsel for all parties and upon an order of the court duly made and entered, the ruling on the demurrers was submitted and the landowning defendants hereinafter called "defendants" were ordered to answer the said second amended complaint without prejudice to their rights under the submission of the demurrers.

Regional counsel for the Bureau of Reclamation of the Department of Interior of the United States on due notice

moved to appear in the proceeding as amici curiae. The appearance in this manner was objected to by the defendants on the ground that any interested party should appear not as amicus curiae, but as a party to the proceeding and by appropriate pleading and representation, as parties to the proceeding. Leave to appear amici curiae was granted and counsel for the Department of Interior, Bureau of Reclamation, participated throughout the proceedings.

[fol. 426] Pursuant to the stipulation and order hereinabove referred to, the defendants filed answers to the second amended complaint. Thereafter, the plaintiff District moved to strike certain portions of said answer and upon stipulation it was agreed that said motion to strike be heard at the date set for the trial of the cause.

The matter being at issue, the cause was set for trial on the 29th day of April, 1952, at which time and place said plaintiff District moved to strike the answers of the defendants, which said motion was denied and the case proceeded to trial.

The matter of the State Engineer of the State of California being a necessary party to the proceeding having been considered, leave of Court was granted for the State Engineer to file a separate answer, as State Engineer, and the Chief of the Division of Water Resources, Department of Public Works of the State of California. The said answer was filed by and through separate counsel therefor.

The issues herein were thereupon joined upon the second amended complaint of Madera Irrigation District, the answer of the defendant, the People of the State of California, the answer of the defendant Water Project Authority of the State of California, the answer of the State Engineer of California and the Chief of the Division of Water Resources, Department of Public Works of the State of California, and the answers of the landowning defen-

[fol. 427] dants. Thereafter the cause proceeded to trial upon the issues so joined.

Upon the 20th day of August, 1952, the landowning defendants moved to amend their answers to the second amended complaint which said motion being duly noticed and heard, was denied. On order of the Court further evidence was introduced on the 20th day of August, 1952, and

the matter having been heard, briefed and argued and the court having arrived at its decision and made and filed its written memorandum decision and order for findings and findings having been prepared and submitted to all parties concerned and the court having considered all matters relative to the said findings of fact and conclusions of law now makes these, its finding of fact and conclusions of law and in connection therewith finds the facts to be and concludes as a matter of law, as follows:

Findings of Fact

I

The Madera Irrigation District, the plaintiff herein, is now and has been at all times since January 12th, 1920, an irrigation district duly organized and existing as such under and by virtue of the laws of the State of California. The office of the Board of Directors of Madera Irrigation District and its principal place of business is now and has been at all times herein mentioned located in the town of Madera, County of Madera, State of California. The lands within said Irrigation District are now and were at all times herein mentioned in the County of Madera, State of California.

[fol. 428]

II

The gross area contained within the boundaries of Madera Irrigation District is approximately 112,000 acres. Of this area approximately 94,000 acres is land that is suited for cultivation and irrigation. Of said gross area approximately 85,000 acres have been developed and are in a high state of cultivation and have been made such by the development by the owners of said land of a system of irrigation for said acreage. The lands are served by a system of private pumps owned by the respective landowners, together with local distribution systems for such pumped water to the respective lands. A part of the said area was served by means of ditches and a supply of water brought to said land owned by said landowners and furnished through the facilities of a private ditch company known as the Madera Canal & Irrigation Co., and commonly called the Emmert System. This system, including

its laterals, ditches, water rights and water supply, was purchased by Madera Irrigation District in 1949 and is now operated by the District. It is the plan of the District to integrate the Emmert System into its over-all distribution system. The population within said Madera Irrigation District was at the time of the execution of said contract approximately 6,000 persons. It was believed by the District that by procuring the supplemental water supply in the amounts as provided for in said contract Exhibit A attached to said complaint, that together with the underground supply and the Emmert System supply, adequate water would be available for irrigation of all irrigable lands [fol. 429] within the District.

III

Each of the answering landowning defendants is the owner of real property within the boundaries of Madera Irrigation District; with the exception of defendant McKinney. The defendants McKinney and Salaberry are the owners of land outside of the boundaries of Madera Irrigation District, which said lands were excluded from the District as hereinafter more particularly set forth. Ever since the organization of said District, the answering defendants, respectively, and their respective predecessors in interest have paid all the assessments levied upon their lands by the said District. The said District has levied assessments upon said lands since the organization of said District. The lands of defendants Salaberry and McKinney which lie outside the boundaries of said District were assessed by said District since its organization until the exclusion of said lands on the 10th day of January, 1951, and all said assessments have been paid. The respective properties of the answering defendants so owned by them and within the boundaries of said District are by the terms of the purported contract marked Exhibit "A" and before this court for validation, made liable for the obligations of the Madera Irrigation District to the United States; said lands will be assessed by said District and the answering defendants, respectively, will be required by said District to pay said [fol. 430] assessments. The individual land holdings of each of the answering defendants are described on the

assessment rolls of Madera Irrigation District and are more particularly set forth in Exhibits attached to the Answer of the answering defendants, respectively.

IV

It is not true that on the 14th day of May, 1951, the plaintiff entered into a contract in writing with the United States, a copy of which said purported contract is annexed to the Second Amended Complaint marked Exhibit "A" and before this Court for validation; the Board of Directors of Madera Irrigation District on or about the 14th day of May, 1951, signed a purported contract, a copy of which is attached as Exhibit "A" to the Second Amended Complaint and is before this Court for validation.

V

The said proposed contract was approved as a proposed contract by the Board of Directors of Plaintiff's District on the 29th day of January, 1951, and by the Secretary of the Interior on the 1st day of February, 1951; thereafter, the said proposed contract and the plan of the project, including a copy of the estimate of cost and the engineer's report was submitted to the California District Securities Commission for examination and report; it is not true that on the 26th day of March, 1951, the said Commission made its report approving said contract; the District Se- [fol. 431] curities Commission of the State of California conditionally approved the said purported contract as a method adopted by said District Securities Commission to enable this court in this validation proceeding to pass upon the regularity or irregularity of said purported contract and its various terms and provisions.

VI

The purported contract bearing the date of the 24th day of May, 1939, and assigned symbol and number Ilr-1126 and entitled "Contract for purchase of water and water rights" was executed by and between Madera Irrigation District and the United States, a true copy of which said purported contract is attached as Exhibit "B" to the Second Amended Complaint on file herein. Under the terms of said

purported contract there are property and property rights conveyed, assigned and transferred by the Board of Directors of Madera Irrigation District from Madera Irrigation District to the United States, pursuant to said contract marked Exhibit "B" and dated the 24th day of May, 1939, which were and are subject to the provisions of a trust as hereinafter more particularly set forth,

VII

During the negotiations of the terms of the contract marked Exhibit "B" and dated the 24th day of May, 1939, the officers, agents, servants and employees of the United States and more particularly the Department of Interior and Bureau of Reclamation, made no representations, statements or declarations that the excess land provisions of the [fol. 432] Federal Reclamation Law would be applicable to said contract marked Exhibit "B"; that at no time during the negotiations for said contract marked Exhibit "B", was mention made that the use of the water rights therein set forth, would be in any manner limited to 160 acres or in any manner at all; the first mention of the limitation of the use of water set forth pursuant to the terms of said agreement made by the United States or any of its officers, agents, servants and employees and more particularly those of the Department of Interior and Bureau of Reclamation, was some two years subsequent to the execution of said agreement; that it was not the manifested intention of the parties to the contract marked Exhibit "B" on the date of execution thereof, that the land limitation provisions of Federal Reclamation Laws would be applicable to the use of the water and the water rights therein set forth.

VIII

On the 18th day of April, 1951, the Board of Directors of the Madera Irrigation District purportedly called a special election to be held on the 9th day of May, 1951, for the purpose of submitting the said proposed contract marked Exhibit "A" and attached to the Second Amended Complaint to the voters of the Madera Irrigation District for their approval. The Board of Directors caused a pur-

ported notice of election, of which Exhibit "C" of the Second Amended Complaint is a true and correct copy, to be published in the Madera Daily News-Tribune, a newspaper published in the County of Madera, once a week for three [fol. 433] successive weeks before said purported election. The said notice was at the time of its publication, defective and incomplete. The said election was improperly and illegally called and no approval of said purported contract marked Exhibit "A" resulted from said purported special election and/or the votes cast thereat at said time or at any time. Like notices as set forth in said Exhibit "C" were posted in three public places in each election precinct in the District for twenty days before said purported election. The said election was not duly and regularly held as provided in said notice. The ballots in said purported election did not contain a brief statement of the general purpose of the contract, substantially stated in the notice of election. The ballots at said purported election did not contain a brief statement of the extent of the obligation to be assumed. The said ballots contained the words "Contract YES" and "Contract NO". More than two-thirds of the ballots cast at said election were marked "Contract YES". On the 13th day of May, 1951, the Board of Directors of said District met at the District Office and canvassed the returns from said purported election, and the said Board of Directors purportedly declared the result thereof. The said contract was not approved by said election. The notice as published by said Board of Directors did not contain a statement of the property to be conveyed by plaintiff District to the United States pursuant to said purported Contract. The said notice so published did not contain a state-[fol. 434] ment of the property rights which would be conveyed by plaintiff District to the United States pursuant to said purported contract. The notice as published did not contain a statement of the right to receive water pursuant to said contract dated the 13th day of May, 1939, which was purportedly relinquished and conveyed by the plaintiff District to the United States pursuant to the terms of said contract marked Exhibit "A" and before this Court for validation.

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS,

vs.

COURTNEY McCRACKEN, ET AL.

No. 123

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS,

vs.

CARL F. STEINER, ET AL.

No. 124

THE MADERA IRRIGATION DISTRICT, APPELLANT,

vs.

PHILLIP AND JANE E. ALBONICO.

No. 125

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT,

vs.

MAURICE A. BALAAM, ET AL.

APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED MAY 13, 1957

JURISDICTION POSTPONED OCTOBER 14, 1957

Supreme Court of the United States

OCTOBER TERM, 1957

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No. 124

THE MADERA IRRIGATION DISTRICT, APPELLANT,

vs.

PHILLIP AND JANE E. ALBONICO.

No. 125

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APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

RECORD PRESS, PRINTERS, NEW YORK, N. Y., FEBRUARY 13, 1958

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IX

The election notice attached to the Second Amended Complaint on file herein as Exhibit "C", was and is defective, insufficient and void as an election notice in the following particulars, among other things:

A. Said notice does not contain a statement of the property to be conveyed by the District to the United States; that at the time of the publication of said notice, Madera Irrigation District was and now is the owner of certain lands and easements in land connected with the water distribution system then and now in existence, known as the Emmert System; that at the time of publishing the said notice, it was and now is the plan and intention of the Board of Directors of Madera Irrigation District and said Madera Irrigation District, to convey to the United States a fee simple title to said lands and the perpetual easements owned by it in connection with the said Emmert System; that by its terms the purported contract marked Exhibit "A" and before this court for validation, requires [fol. 435] that upon request of the contracting officer, Madera Irrigation District must convey to the United States, without cost, the unemcumbered (sic) fee simple title to all lands owned by it, or perpetual easements therein, required for right of way purposes for the distribution system; that the Emmert System is a portion of the distribution system to be constructed, repaired and enlarged by the United States pursuant to the plan of the distribution system agreed upon by the District and the United States; that the fee title to lands underlying the ditches of the Emmert system or the rights of way or easements owned in connection therewith, were not stated in said election notice as property to be transferred to the United States pursuant to the purported contract marked Exhibit "A" and before this court for validation.

B. Said election notice does not state the maximum amount of the construction costs relative to the major works of the Central Valley Project, nor does said notice state the maximum amount to be paid by the District upon said construction costs, (apart from said local distribution system as described in part B of said contract.)

C. That the terms of said contract marked Exhibit "A" and before this court for validation, required the forfeiture to or the transfer to the United States of property and property rights owned by Madera Irrigation District and all of the landowners therein, pursuant to the terms of Ex-
[fol. 436] hibit "B" attached to the Second Amended Complaint; that among these property rights so transferred, conveyed or relinquished to the United States, which were held by said Madera Irrigation District for all of the landowners therein, pursuant to the terms of said contract marked Exhibit "B" and dated the 24th day of May, 1939, are the following:

1. A right to receive a supplemental water supply for all irrigable lands within the boundaries of said District, without regard to acreage limitation or excess land limitations.

2. A permanent, appurtenant water right for all lands lying within the boundaries of Madera Irrigation District as said District was constituted on the 24th day of May, 1939, and as said District was constituted upon the date of execution of the purported contract now before this court for validation.

D. Said election notice is ambiguous, indefinite and uncertain, in that it cannot be ascertained therefrom whether the United States will construct a distribution system to each unit of 160 acres of irrigable land within the District for the sum of $8,320,000.00 or whether the United States will expend the sum of $8,320,000.00 for the construction of a partial distribution system.

X

Said election was not conducted fairly; said election was [fol. 437] not conducted in all respects according to law; that it is not true that the result of said election was the approval of said contract by the voters of the District. The Board of Directors of Madera Irrigation District caused to be published in the Madera Daily News Tribune false and misleading statements concerning the provisions of the contract in respect to the completion of a distribution

system to each 160 acres of land by the United States for the sum of $8,320,000.00 or less; said statements influenced the voters of said District at said election, and the true results of said election cannot be ascertained by reason of said false and misleading statements.

There was represented to said voters by means of said newspaper advertisement and said purported notice of election that the design and construction of said distribution system would provide a system for the delivery of water to each unit of not more than 160 acres of irrigable land within the District at a cost to the District of not to exceed $8,320,000.00. Said amount to be repaid by the District in 40 equal payments without interest. The United States now claims that the United States is under no obligation under said contract herein sought to be validated to construct a complete distribution system to each unit of 160 acres of irrigable land within the District boundaries for said sum of $8,320,000.00. There has been represented to the Board of Directors of said District that said distribution system would cost in excess of $12,000,000.00 and that the total cost thereof over and above said $12,000,000.00 [fol. 438] is unknown.

XI

Thereafter and pursuant to the provisions of Section 1 of the Act of May 15, 1922 (Ch. 190, 42 Stat. 541, 43 USCA 511,) and of Section 46 of the Act of May 25, 1926 (44 Stat. 649, 650 43 USCA 423 e,) and pursuant to the requirements of Article 36 of said contract, Exhibit A attached to said complaint, and pursuant to the provisions of Section 23225 of the Water Code of California and to the extent adopted therein, the provisions of Sections 22670-22684 of the Water Code of California, this proceeding was authorized and instituted by Madera Irrigation District to obtain a judicial examination, approval and confirmation of (1) all the proceedings had and taken for the organization of Madera Irrigation District as an irrigation district; (2) for such a determination of all the proceedings leading up to and including the claimed execution and delivery of said proposed contract, Exhibit A; (3) the validity of said contract, Exhibit A, and the legality and binding effect of each and

every term and provision thereof, upon, against and in favor of the parties thereto; and (4) the right and authority of the respective persons signing the same and the parties thereto to execute said proposed contract. The prayer also requested such other and further orders and decrees as to the Court shall seem just, wise or necessary in the proceeding.

XII

[fol. 439] That for many years prior to 1948 the State of California has been making studies, developing plans and proceeding with an over-all plan for the conservation, storage and distribution of water from its intrastate streams and sources of water supply to the end of having and furnishing of a supplemental supply of water where needed to developed areas and the furnishing of a supply of water where needed and as available to undeveloped areas. That as a part of this over-all plan by the State of California, there came into being a project which has become known and designated as the "Central Valley Project of California". That the Central Valley Project was, pursuant to act of the Legislature of the State of California enacted August 5, 1933, and duly approved upon referendum by the electors of said State on December 19, 1933, duly authorized as a coordinated plan for the development of the Sacramento and San Joaquin Rivers through a system of physical works, for the primary purpose of conserving, transporting, and by means of exchange of waters, making a supplemental supply of water available to agricultural lands within the said Central Valley Project possessing an insufficient supply of water; that for that purpose and deemed an indispensable part of said authorized project, works were planned and constructed, including the construction of Shasta Dam on the Sacramento River to store and conserve the waters thereof, and to make available by means of an exchange of waters, surplus waters from the Sacramento River to the large area of agricultural land in the San Joaquin Valley having an insufficient water [fol. 440] supply, and to substitute, in part, such surplus waters from the Sacramento River for waters of the San Joaquin River impounded and diverted at Friant Dam on

the San Joaquin River for use in the San Joaquin Valley; that the Central Valley Project is within the Great Central Valley of California, lying between the Sierra Nevada and the Coast Range and extending north and south a distance of approximately 450 miles; that said Great Central Valley consists of the Sacramento Valley in the north and the San Joaquin Valley in the south, the major rivers being the Sacramento and the San Joaquin Rivers, respectively; that the Sacramento River runs in a southerly direction from its source in the Siskiyou and the Sierra Nevada Mountains in Northern California above the Shasta Dam, and the San Joaquin River runs in a northerly direction from its source in the Sierra Nevada Mountains above Friant Dam and east of Fresno in the southerly portion of the San Joaquin Valley, both rivers converging in the common delta of said rivers in the upper reaches of the San Francisco Bay; that of the acreage in the two valleys above three-fifths lies in the San Joaquin Valley, while about two-thirds of the water production of the area comes from the Sacramento River; that as part of said authorized project, works were planned to impound and divert at Friant Dam the waters of the San Joaquin River northerly in the Madera Canal and southerly in the Friant-Kern Canal for the irrigation of lands generally, along the easterly side of the San [fol. 441] Joaquin Valley, including service from the Madera Canal to the lands of the plaintiff District, the waters so diverted to be replaced in major part by the transportation of excess and unneeded waters of the Sacramento River; that all waters utilized and to be utilized under said project plan rise and flow wholly within the State of California, and that for many years prior to the adoption of the project plan by the State there was, and now is, an extensive agricultural development within said San Joaquin Valley, including plaintiff District, and most lands within said Valley were, and now are, under production and under irrigation from privately acquired or developed sources of water supply; that much of the irrigation was and is by pumping from underground water supplies, and that the available surface and underground water supplies were and are gradually being seriously reduced and were and are in need of replenishment.

That as a part of this general program, the facts concerning which are hereinafter more specifically found upon, the Director of Finance of the State of California filed applications to appropriate the unappropriated waters within the State of California. That among these applications were applications to appropriate water as and for a supplemental water supply for the area and lands now included within the boundaries of Madera Irrigation District.

XIII

That commencing in 1850 the State of California made [fol. 442] studies throughout the State of California, including in particular in the Sacramento and San Joaquin Valleys, for the conservation of its water resources; the said studies continued throughout the years and there was developed by the State of California a State Water Plan. As a part of this Plan for the conservation of its water resources, the State of California made studies of all available dam sites for the storage and ultimate distribution for agricultural as well as other purposes, of its water resources. As a part of and in keeping with such endeavors and in order to have all waters that had not been appropriated and put to use available for such plans, the State of California in 1927 and following, authorized and caused the Director of Finance of the State of California to on behalf of the State of California and in furtherance of such development, file with the State Engineer, Division of Water Resources, Department of Public Works of the State of California (hereinafter in these Findings referred to as "State Engineer") applications to appropriate and put to use all of the unappropriated waters within the State of California, and pursuant thereto the Director of Finance of the State of California did file such Applications on all of the major sources of water supply within the State. That included within the studies and the steps taken by the State of California were detailed studies and engineering reports with particular relation to the Sacramento and San Joaquin Valleys of California of a project that came to be known and is known as the "Central Valley Project of California". [fol. 443] That the Central Valley Project of California, as

planned by the State of California, includes the construction of dams, hydro-electric development, the storage of water, and the construction of canals for the distribution of water to areas within the Sacramento and San Joaquin Valleys of California, including the service of water from Friant Dam through the Madera Canal to the identical lands included within the boundaries of Madera Irrigation District. That to carry out the studies and plans of the State of California, in 1933, through a legislative action there was brought into being an agency of the State of California known and designated as "The Water Project Authority of the State of California". That said agency was given and still has, not only the right and power to, but the duty to, construct, operate and maintain the project, including the making of contracts with water users and the collection of rates, charges and revenues therefor, and to repay the costs of the project. That said Water Project Authority was authorized to issue and sell $170,000,000.00 in bonds to finance the construction and operation of said Central Valley Project. That in 1934, because of the then existing depression, said Water Project Authority of California, deeming it not advisable to sell said bonds at said time, made application to the Federal Emergency Administration of Public Works for a loan and grant to the Water Project Authority of the State of California, said loan and grant to be utilized to construct and operate said Central [fol. 444] Valley Project and to be repaid through revenues realized by said Water Project Authority of California from said Central Valley Project of California. That while this application was pending and in 1935, as a part of the relief program to create employment and aid in construction of public works, there was allocated by presidential order $20,000,000.00 for use in connection with the Central Valley Project of California. In March of 1936 a contract was entered into by and between the Water Project Authority of California and the Federal Government under the Emergency Relief Appropriation Act of 1935 of the United States, which contract provided, among other things, "in order for the accomplishment of the early construction and operation of the project in the most expeditious and economical manner, the Bureau of Reclamation and the Water

Project Authority shall cooperate fully with each other in attaining such end", and "it is contemplated that at the earliest practicable date a contract will be entered into between the United States and the Water Project Authority providing for—

"(a) The operation and maintenance by the Authority of useful units of the project, upon presenting assurances of payment satisfactory to the United States of the costs thereof;

"(b) Appropriate payment by the Authority to the United States for expenditures in construction of the project;

"(c) The securing by the Authority of the appropriate [fol. 445] contracts for disposal of facilities to be made available by the project."

On March 13, 1937, and on November 8, 1937, supplemental contracts to said contract of March, 1936, were entered into by and between the Water Project Authority and the Federal Government containing (a), (b), and (c) above quoted, but the introductory recital in said supplemental contracts read: "It is contemplated that at the earliest practicable date, and *as soon as permitted by law*, a contract will be entered into between the United States and the Water Project Authority . . .". That the provisions relative to (a), (b), and (c) above quoted in said contract of March, 1936, and in contracts supplemental thereto have never been revoked.

XIV

Thereafter the Water Project Authority of the State of California and the agents and representatives of the State of California attempted to procure from the United States of America a contract or contracts whereby the State of California by and through the Water Project Authority of California could and would proceed with the making of contracts with irrigation districts and other agencies for the delivery of water from the Central Valley Project of California to the areas to be served and to enable the Water Project Authority of California to operate and maintain

the useful units of said project and to repay to the United States the repayable costs of said project. That any con- [fol. 446] tract or contracts in connection therewith and to that end were and have been refused and the United States, through the Department of Interior and the Bureau of Reclamation, has insisted that all contracts for the delivery of water or other service from the Central Valley Project, as it has been from time to time completed and/or is being constructed, should be made exclusively with irrigation districts and local agencies by and through the Bureau of Reclamation and Department of the Interior of the United States and upon such terms and conditions as should be prescribed by the Bureau of Reclamation.

That although now and for several years past, the United States, acting by the Bureau of Reclamation, has maintained that numerous provisions of the Federal Reclamation Laws, including the so-called 160-acre limitation, must, as a matter of Federal Law, be applied to the Central Valley Project, the United States did not disclose or make known to the State of California or its representatives any intention so to apply such provisions, or any claim that such provisions were applicable thereto, until in or about the year 1941.

XV

The Central Valley Project is a multiple-purpose project, designed and planned by the State of California and functioning for the general purprose (sic) of irrigating arid lands in the great Centàl (sic) Valley of California, and other purposes. The great Central Valley of California is the Valley which lies in the basin of the Sacramento and San Joaquin Rivers and their tributaries. The project [fol. 447] contemplates the use in said Valley for irrigation, municipal, domestic, power and other beneficial purposes of the water of the Sacramento and San Joaquin Rivers and their tributaries. Said waters rise, flow and discharge into the Pacific Ocean wholly within the State of California. There are no irrigable public lands of the United States within the service area of the said Central Valley Project in said great Central Valley. Said project was planned and generally designed by the State of Cal-

ifornia that the plans, purposes and features of said project are substantially as set forth and described in bulletins 25, 26 and 29 of the Division of Water Resources, Department of Public Works of the State of California, which bulletins constitute reports submitted by said Division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; said bulletins and reports contained therein are official documents of the Executive Department of the State of California.

XVI

That the Central Valley Project was primarily designed to provide and does and will provide a stabilizing source of supplemental water supply for irrigation and other purposes incidental thereto on a vast acreage of lands now under irrigation in the great Central Valley of California, some of which said lands without such supplemental water supply, including the lands within the boundaries of the [fol. 448] plaintiff Madera Irrigation District would have inadequate sources of supply. That the construction, operation and maintenance and management of said Central Valley Project will profoundly effect (sic) the economy and welfare of the people of at least twenty-one of the fifty-eight counties of California, embracing several million acres of land comprising more than one-half of the cultivated agricultural lands of the State. That the major engineering features of said project include:

(1) Shasta Dam and Reservoir and Hydroelectric power plant and Keswick Dam and power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plants, and appurtenances thereto;

(2) Delta-Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said delta to the Mendota Pool on the San Joaquin River;

(3) Contra Costa Canal, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(4) Friant Dam and Reservoir on the upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant Reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant Reservoir southerly to a point on Kern River near Bakers-[fol. 449] field;

(7) Folsom Dam and Reservoir and hydroelectric power plant on the American River near the City of Folsom, with certain electric transmission lines leading from said power plant and appurtenances thereto, and related works;

(8) Sly Park Development.

XVII

That among the applications made by the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, were the following applications duly filed in the office of the State Engineer to appropriate water from the Sacramento River and the San Joaquin River, to wit: application 5629, records of the State Engineer, Division of Water Resources, to appropriate water of the Sacramento River at Shasta Dam, filed July 30, 1927, to appropriate a diversion of 11,000 second feet constituting 3,190,000 acre feet per annum of storage for power purposes; application 5626, records of the State Engineer, Division of Water Resources, filed July 30, 1927, to appropriate the waters of the Sacramento River at Shasta Dam to divert 8,000 second feet constituting 3,190,000 acre feet per annum for irrigation, domestic use, saline, flood control and navigation purposes; application 9364, records of the State Engineer, Division of Water Resources, filed August 2, 1938, to appropriate the waters of the Sacramento River from Shasta Dam to divert 9,000 [fol. 450] second feet constituting 3,000,000 acre feet per annum for irrigation purposes; application 9365, records

of the State Engineer, Division of Water Resources, filed August 2, 1938, to appropriate waters of the Sacramento River at Shasta Dam to divert 7,000 second feet constituting 3,310,000 acre feet per annum for power purposes; application 5637 records of said Division filed July 30, 1927, to appropriate the waters of the San Joaquin River at Friant Dam to divert 5,000 second feet constituting 1,210,000 acre feet per annum for irrigation, domestic, and flood control purposes; application No. 9369 records of said Division to appropriate the waters of the San Joaquin River at Friant Dam to divert 2,000,000 acre feet per annum for irrigation, domestic use and flood control.

That the waters involved in these applications are necessary to enable the furnishing of a water supply from Friant Dam through the Madera Canal to the lands within the Madera Irrigation District, including the lands of the answering landowner defendants. That the United States sought unconditional assignments from the Department of Finance of the State of California to the United States of the aforesaid applications, which unconditional assignments were refused and conditional assignments were made providing that the waters involved within the assigned applications were to be used in furtherance of and as a part of the Central Valley Project of California and for the delivery to the lands to be benefited by said applications. That included within the designations contained in [fol. 451] said applications and the maps and data filed in connection with the aforesaid applications was a description of the property to be served and benefited by said applications and that said description and descriptions included the identical land now contained within the Madera Irrigation district and including the lands of the answering landowner defendants. That the water to be delivered from Friant Dam and through the Madera Canal under the provisions of said contract Exhibit A attached to said complaint is a part of the water involved in said applications to appropriate water, which applications were made, as aforesaid, by said Director of Finance and were conditionally assigned to the United States in trust for the use and benefit of the Central Valley Project and which water was designed and intended to be appropriated for delivery to

the lands now comprising the area within the boundaries of Madera Irrigation District, as well as other lands within other irrigation districts and similar water agencies within the area to be served by said project. That said applications are still pending and are in good standing and that proceedings are pending before the Division of Water Resources, Department of Public Works of the State of California, as to permits to be issued in connection therewith. That there is now being delivered by the United States to the Madera Irrigation District Water from Friant Dam and through the Madera Canal for use on the lands within the district, which said water is included in said applications and assignments. This water is now being beneficially [fol. 452] used by the plaintiff District and the landowners therein.

That the application made to the State Engineer to appropriate unappropriated water created in the applicant in trust for the persons for whose benefit the application was made and in such beneficiaries, a property right which right the Court expressly finds to be, as applied to all parties and persons for whose benefit said applications were filed, including the landowners in the plaintiff District, a vested interest in real property.

That the United States has acquired in trust vested appropriative rights to the use of the waters of the San Joaquin River which are not subject to the jurisdiction of the State Engineer; but by far the greater portion of the water required for project purposes is subject to permits therefor to be issued by the State Engineer; that the United States now holds such applications, the more important having been acquired by assignment in trust from the State Department of Finance as herein found, for water sufficient for the project purposes; that permits by the State of California for the use of said water have not as yet been issued; that these findings and conclusions are not intended to, nor shall they, in anywise interfere with, restrict, or limit the lawful discretion of the State Engineer in acting upon such applications, or in the issuance of permits and licenses pursuant thereto, or in conditioning the same in the public interest, but that it is intended that he should [fol. 453] proceed to exercise the discretionary power

vested in him without undue delay or injury to the water users within the District.

Prior to the assignments to the United States by the State of California of the applications for appropriation hereinbefore set forth, the owners of all the lands situated in the areas described in said applications possessed an incomplete, incipient and conditional right in the water applied for, subject to the discretionary power of the State Engineer as herein recited in acting on said applications, which right was a vested interest in real property, and said rights were not extinguished by the aforesaid assignment to the United States. At the time of the filing of said applications and the vesting of said rights, no limitations were placed by the State of California upon the use of said water on lands owned by an individual in excess of 160 acres. The United States as assignee of said applications received the same subject to the rights of the landowners of the lands described in said application, including all of the landowners herein, and the United States as such assignee acquired no greater rights than those held by its assignor, the State of California. The United States as assignee of said applications received the same in trust for the uses and purposes of the Central Vally (sic) Project as said uses and purposes are set forth in the laws of the State of California. As such assignee, the United States became the trustee for the benefit of the landowners de- [fol. 454] scribed in said applications, including all of the landowner defendants herein, and as such trustee, was charged with the duty to utilize said waters upon the lands of said beneficiaries without regard to limitation as to acreage as is set forth in Paragraphs 28, 29 and 30 of the contract before the Court for validation.

XVIII

That by contract dated the 27th of July, 1939, by and between the United States and the South San Joaquin and Kings River Canal and Irrigation Company, Inc., and other corporations commonly referred to as the "Exchange Contract", and by contract dated July 27, 1939, between the United States and Miller & Lux, Incorporated, and Gravelly Ford Canal, corporations doing business in California, and

by other comparable contracts, reference to which is made in paragraph (d) of Article 16 of the contract herein sought to be validated, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by the companies with whom said contracts were made, in and to the waters of the San Joaquin River and its tributaries and the United States by said "Exchange Contract" agreed to deliver to said contracting companies in lieu of and in exchange for their rights to certain waters of the San Joaquin River other and different waters from the Sacramento River and its tributaries, which other and different waters were to be imported to the Mendota Pool by means of the Delta Cross-Channel, [fol. 455] Tracy Pumping Plant and the Delta-Mendota Pool Canal. That the United States entered into all of said contracts herein referred to in order that waters of the San Joaquin River and its tributaries above Friant Dam could be stored in Friant Reservoir and diverted northerly through the Madera Canal and southerly through the Friant-Kern Canal for the irrigation of lands in the counties extending from Madera on the north to Kern on the south, and which lands are located generally on the easterly side of the San Joaquin Valley floor, including, among other areas, the lands within the plaintiff District (as well as other lands within other irrigation and similar districts within the service area in said easterly portion of said Valley). That it was and is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir, sometimes known as Millerton Lake, and convey the same through the Madera Canal for the irrigation of the lands in the plaintiff District, and in particular to the lands of the answering landowner defendants. That in the making of said contracts by the United States with said contracting companies and in the acquiring of such exchange rights and estoppels, the United States did not do so in connection with the serving of any property or lands of the United States. That said contracts were so made, designed and intended solely as a means of arranging an exchange of waters from the Sacramento River to serve lands theretofore served by waters of the San Joaquin River and to

[fol. 456] enable the taking of waters from the San Joaquin River and in particular from Friant Dam to the lands for which said San Joaquin River waters had been appropriated, including the lands within plaintiff District. That the United States, in making said contracts and in acquiring such rights, did so wholly and solely in connection with said Central Valley Project of California and that any and all costs in connection therewith are and were charged by the United States to said Project as a part of said Project costs and that all such costs are and will be treated as a part of such Project costs to be returned to the United States as in the manner of the return to the United States of its other returnable costs in connection with said Project. That any and all such rights and interests of the United States are held by the United States solely as trustee for the use and benefit of said Central Valley Project, including the plaintiff District and the lands of the answering landowner defendants, and that the use of such rights and waters involved therein can be made only in connection with the operation of said Central Valley Project.

XIX

Since the organization of the Madera Irrigation District in 1920, the owners of land, including these answering defendants and their predecessors in interest, lying within said irrigation District as the boundaries existed from time to time, were assessed for and paid assessments to acquire [fol. 457] for the use and benefit of said lands, including the lands of the answering defendants, water rights, real property and other properties and in particular, the land, ground and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for the construction of said Dam, together with rights of way and easements and water rights and filings upon waters, that would be and now are, being impounded behind Friant Dam, and as more particularly set forth and described in said contract dated the 24th day of May, 1939. The rights in and to said waters in said Dam site and other aforementioned property were acquired by Madera Irrigation District and the Board of Directors thereof, as Trustee

for all of the landowners within the boundaries of said District as beneficiaries of said trust; included among said beneficiaries, were these answering defendants and their predecessors in interest.

XX

On the 24th day of May, 1939, the Board of Directors of Madera Irrigation District made and entered into an agreement, the words, terms and figures of which are set forth as Exhibit "B" attached to the Second Amended Complaint herein; said contract was not submitted to the electorate for the vote of the landowners within said District, including these answering defendants and/or their predecessors in interest and was made without their knowledge or consent; said contract was not submitted to the District Securities Commission of the State of California and/or ap-
[fol. 458] proved by said District Securities Commission; the said contract was made without the knowledge or consent of the landowners within said District, including these answering defendants and/or their predecessors in interest, and purported to sell, transfer and convey to the United States, the right, title and interest of Madera Irrigation District as Trustee of the said landowners who were beneficiaries of said Trust as hereinafter and heretofore set forth, in and to the property and water rights acquired by said District as therein and as hereinafter and heretofore set forth.

XXI

At the time and place of the execution of said contract marked Exhibit "B", attached to the Second Amended Complaint herein and dated the 24th day of May, 1939, the United States, its officers, agents, servants and employees, then and there well knew that said property and water and water rights therein purportedly conveyed, were held by Madera Irrigation District and the Board of Directors thereof in trust for all of the landowners within the boundaries of said District, as beneficiaries of said trust; any right, title or interest which the United States acquired under and by virtue of said contract marked Exhibit "B" in and to said properties and/or water and/or water rights,

was and is held in trust by the United States for the benefit of all of the landowners, including these answering defendants and/or their predecessors in interest, of the lands comprising the area within Madera Irrigation District as [fol. 459] of the date of the said contract or document designated as Exhibit "B" and bearing the date of the 24th day of May, 1939.

XXII

At the time of the acquisition of said property by Madera Irrigation District, as more particularly described in said contract bearing date of the 24th day of May, 1939, the said water rights, real property and other properties and in particular the ground, land and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for the construction of said Dam, together with the rights of way and easements and water rights and filings upon waters that would be and now are being impounded behind Friant Dam, were necessary for District purposes; at the time of execution of said contract, the said property and water and water rights were then, and each of them now are, necessary for District purposes.

XXIII

Subsequent to the execution of the contract marked Exhibit "B" and hearing (sic) the date of the 24th day of May, 1939, and prior to purported execution of the contract before this Court for validation, the Chowchilla Water District was on the 9th day of February, 1949, duly organized under the provisions of the California Water District Act and at all times since the 9th day of February, 1949, is and has been a legally authorized and organized Water District under the laws of the State of California; there was con- [fol. 460] tained in the boundaries of said Chowchilla Water District when so organized, 43,454.68 acres within the boundaries of Madera Irrigation District; petitions for exclusion of the said 43,454.68 acres within Madera Irrigation District were duly filed by the owners of said land with Madera Irrigation District; subsequent thereto and by action of the Board of Directors of Madera Irrigation District, the said 43,454.68 acres were excluded from Madera

Irrigation District; on the 24th day of August, 1949, Madera Irrigation District executed an assignment to Chowchilla Water District, of an average annual supply of 53,000 acre feet of water, to which Madera Irrigation District was entitled pursuant to said contract marked Exhibit "B" and dated the 24th day of May, 1939, which said quantity of water was the proportionate quantity of water to which the said 43,454.68 acres of land was entitled pursuant to said contract marked Exhibit "B"; said assignment was accepted and approved by the Secretary of Interior of the United States on the 16th day of September, 1949, and was consented to by Chowchilla Water District; Madera Irrigation District did further transfer and pay to Chowchilla Water District, a pro rata portion of the assets of Madera Irrigation District represented by the said 43,454.68 acres of land.

Thereafter and on the 12th day of December, 1950, petitions for exclusion of 23,600 acres of land were filed with Madera Irrigation District; filed with said petitions for [fol. 461] exclusion was a request on behalf of petitioners that the Board of Directors of Madera Irrigation District express by resolution their willingness to assign to said lands their pro rata share of the water rights which belong to said lands under the provisions of said contract dated the 24th day of May, 1939; and further, that said Board of Directors of said Madera Irrigation District express by resolution their willingness to assign to a water district to be formed of these lands, the due pro rata share of the assets of Madera Irrigation District, which said share is represented by the proportion of the assessments paid to the District by said lands petitioned for exclusion; said 23,600 acres of land requesting exclusion from Madera Irrigation District constituted a separable block of land of common types and characteristics dissimilar in nature to many lands of the District; prior to the filing of said petition for exclusion by the owners of said lands, the District Securities Commission of the State of California had found, in their report dated October 2, 1950, that it was in the public interest that if said block of lands was excluded from Madera Irrigation District, there should be preserved to them their pro rata share of water to which

Madera Irrigation District was entitled pursuant to the terms of said contract dated the 24th day of May, 1939; thereafter the Board of Directors of Madera Irrigation District excluded approximately 19,500 acres of said 23,600 acres of land from Madera Irrigation District, but failed and refused to express their willingness to assign and [fol. 462] failed to assign or transfer a pro rata share of water to be delivered to Madera Irrigation District pursuant to the terms of said contract dated the 24th day of May, 1939, and refused to express their willingness to transfer to the district to be formed of said lands so excluded, a pro rata share of the cash assets of Madera Irrigation District; at all times since the exclusion of said lands, the Board of Directors of Madera Irrigation District failed, neglected and refused to transfer the said water rights or cash assets of Madera Irrigation District or to express their willingness to do so;

That Madera Irrigation District had the right to receive water pursuant to said contract dated the 24th day of May, 1939, as Trustees for the use and benefit of the said 19,500 acres of land so excluded from said District; said 19,500 acres of land and the owners thereof, including the defendants, Salfaberry and McKinney herein, were the beneficiaries of said trust; pursuant to the terms of the contract before this court for validation, the Board of Directors of Madera Irrigation District attempted to transfer the said right to receive water pursuant to the said contract dated the 24th day of May, 1939, to the United States; the purported transfer constituted a breach of trust on behalf of Madera Irrigation District and the Directors thereof as to the said 19,500 acres of land so excluded from said District and the owners thereof and if validated, would constitute the taking of property without due process of law [fol. 463] and without just compensation; the quantity of water purportedly transferred by said contract before this court for validation to the United States, and the right to the use and benefit thereof, was held by Madera Irrigation District and the Board of Directors thereof, and/or the United States by and through the Department of Interior, U. S. Bureau of Reclamation, in trust for the said 19,500 acres of land and the owners thereof, including defendants

Sallaberry and McKinney herein; any rights that the United States acquired pursuant to the contract dated the 24th day of May, 1939, were and are as to the said 19,500 acres of land, held in trust for said lands or the owners thereof.

XXIV

That it is true that prior to the execution of the contract marked Exhibit "B" and dated the 24th day of May, 1939, and the purported contract marked Exhibit "A" and before this court for validation, Madera Irrigation District acquired as Trustee for all of the landowners within the boundaries of said District, as said District was then constituted by reason of its applications to appropriate water of the San Joaquin River and other sources, an incipient right in the water applied for and which right the Court expressly finds to be, as applied to all parties and persons for whose benefit said Applications were filed, including the landowners in the plaintiff District, a vested interest in real property; said purported contract marked Exhibit "A" and before this court for validation purports to divest from said Madera Irrigation District [fol. 464] and the said Madera Irrigation District as Trustees for all of the landowners within said District, certain permanent water rights and to substitute in its place a temporary water right; if said purported contract marked Exhibit "A" and before this court for validation were validated, that said substitution of said temporary water right for said permanent right, would constitute a deprivation of property of the landowners within Madera Irrigation District, without due process and without just compensation being paid therefor, or any compensation being paid therefor; the right to the use of said water is unrestricted as to acreage or other ownership conditions; said contract purports to limit the right to use said water by the terms and conditions set forth in paragraphs 28, 29 and 30 thereof; that the imposition of said conditions constitutes a breach of said trust and a deprivation of property without due process of law and without payment of just compensation therefor; the interest of all of said landowners within the boundaries of said District, includ-

ing the answering landowner defendants herein and their predecessors in interest, as beneficiaries of the trust heretobefore set forth; in and to said permanent water rights, was and is a present, existing and vested property right.

XXV

That all applications to appropriate unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, or any thereof, duly filed with the State [fol. 465] Engineer, Division of Water Resources, Department of Public Works of the State of California, and which continue in good standing on the records of said Division, which were made, acquired and are now held by the United States of America, Bureau of Reclamation, with the objective of acquiring rights to the use of such water to be delivered through the works of the Central Valley Project for irrigation, whether such applications were made by said United States or acquired from others, including the State of California, Department of Finance, are held by the United States as trustee for the beneficiaries of said project; that said applications to appropriate the unappropriated waters of the Sacramento River were made and acquired by the United States in part to enable the delivery of water through project works in accordance with the obligation of the United States pursuant to said Exchange Contract as recited in these findings, and in order to enable the United States, in operating said project, to utilize water of the San Joaquin River equivalent in quality and quantity to that imported from the delta of the Sacramento and San Joaquin Rivers, and derived in part from the Sacramento River; that the plaintiff Madera Irrigation District and all of its landowners and all of the answering landowner defendants, including the owners of the 19,500 acres of land excluded from Madera Irrigation District, are beneficiaries of said trust as herein found, including the right to require the United States to exercise due diligence in completing said [fol. 466] applications and in particular, subject to the proper exercise of discretion of said State Engineer in acting on said applications to secure the issuance by said State Engineer to the United States of permits pursuant to said

applications; that by reason of said applications so made, held or acquired as recited in these findings, the plaintiff Madera Irrigation District, for and on behalf of all its landowners now has a vested right in the water applied for, subject to the discretionary power of said State Engineer as herein recited in acting on said applications, and which said right the court finds to be a vested interest in real property; and in the event of issuance of said permits by the said State Engineer and upon application of said water to beneficial use by plaintiff Madera Irrigation District and its landowners and the owners of the said 19,500 acres excluded from the District, in accordance with said permits, said District and all of its landowners and the owners of said 19,500 acres will acquire a permanent and perpetual appropriative right appurtenant to all lands within said District and to the lands so excluded, to continue to receive and so use water delivered by the United States, with priority of date of said applications, subject only to conditions lawfully imposed as authorized or required by the laws of the State of California.

XXVI

The Secretary of the Interior in constructing, operating, [fol. 467] and maintaining said project is under mandate from the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, to acquire any and all rights to the use of water required for project purposes pursuant to the laws of the State of California relating thereto, and in operating said project to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation; that the United States has acquired, and is proceeding to acquire appropriative and other rights of various characters to the use of water for purposes of said project, all solely as such trustee, and in delivering said water is required to do so solely as a carrier and distributor of such water to the beneficiaries of such trust.

XXVII

That by virtue of the facts and circumstances herein found, recited and existing, including said assignments of said applications, the State of California has become and is the trustor of an express trust; the United States has become and is the trustee of that trust; the landowners, including the landowners of the plaintiff District and the landowners in said 19,500 acres excluded from said District, have become and are beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contracts referred to in paragraph XVIII of these Findings, including those referred to in the provisions of [fol. 468] Article 16 (d) of the contract sought to be validated herein, and including similar and comparable contracts and by and through the assignments to which reference has herein been made as to said applications to appropriate water, are held by the United States as such trustee and as a part of the trust fund or res for the use and benefit of the owners of said land so excluded and the plaintiff District as the representative of the landowners therein, in order to, among other things, preserve to such landowners the right to acquire permanent rights to the use of water from the works of said project pursuant to the laws of the State of California and of the United States; that the United States does not have and will not own or have any right of ownership or title to any water of the State acquired or to be acquired for the purposes of said Project, other than as such trustee; that such trust status and relationship is hereby found to exist, and the effect of said contract, if it were validated, would be to create uncertainty and doubt as to those matters and thereby cast doubt upon the authority and jurisdiction of the authorities of the State of California to discharge their responsibilities under California law, and would deprive the State of California and the Water Project Authority of the State of California and the Division of Water Resources of the State of California of their rights, duties and responsibilities in the administration of the laws of the State of California and would deprive the plaintiff district and the landowners therein and the owners of the land so [fol. 469] excluded, of property without due process and

without compensation and would deprive all parties concerned of the right to be heard before the courts in the protection of their rights and interests.

XXVIII

That the studies of the State of California relative to the conservation and use of the water resources of the State of California, as more particularly hereinbefore outlined and the adoption of a State Water Plan by the State of California and in particular the preparation of the plans, design and planned construction of the works to be and constitute the Central Valley Project of California and the creation of the Water Project Authority as an entity and agency of the State of California for the purpose of planning, constructing, operating, maintaining and repaying the costs of said Central Valley Project of California and the construction of all works in connection therewith including units added to the original planned Central Valley Project of California have been and were designed and planned as a permanent project, that the construction of the dams and canals for the storage and delivery of storage water within said Central Valley Project to the various areas to be benefited, including in particular the lands within the plaintiff District and including the plans for the construction of a distribution system within said plaintiff District, each and all were planned and designed, constructed, and are being operated not as temporary works, but as permanent and perpetual works for the [fol. 470] continued delivery of water to the lands within the plaintiff District (as well as other irrigation districts and like agencies within said Central Valley Project).

XXIX

That the United States acting by and through the Department of Interior maintains and asserts that the Central Valley Project of California, as herein referred to, was authorized for construction by and through the Bureau of Reclamation in and by acts of Congress as follows: The Rivers and Harbors Act of 1937, the Rivers and Harbors Act of 1940, the Act of Congress approved October

14, 1949, and an Act of Congress approved September 26, 1950. That the United States, acting through the Secretary of the Interior and Bureau of Reclamation, has substantially completed the construction of said Project (with the exception of that portion thereof set forth in Subsection 7 and 8 of paragraph XVI hereof) and is now operating and maintaining the usuable, (sic) completed works of said Project.

XXX

That the United States claims to be the sole and exclusive agency, through the Department of Interior and Bureau of Reclamation, for the selling of water to Madera Irrigation District from Friant Dam; that the only contract or contracts for water delivery which have been offered by the United States or which the United States is willing to make with Madera Irrigation District for use of water from said Central Valley Project has been and is the contract marked Exhibit "A" attached to the com- [fol. 471] plaint; that said contract is offered by the Bureau of Reclamation of the Department of Interior on behalf of the United States as one which the officials of the Department of Interior and the Bureau of Reclamation of the United States claim and contend is authorized and provided for by Section 9(e) of the Reclamation Project Act of 1939 of the United States; Act of August 4, 1939, Chapter 418, 53 Stats; 1184, 43 U.S.C. 485. In that connection, it is claimed by the officers, agents and representatives of said Bureau of Reclamation, Department of Interior of the United States and the Secretary of Interior of the United States, as follows:

(1) That under the authority of said Section 9(e) of said Reclamation Project Act of 1939, said contract, Exhibit "A" attached to plaintiff's complaint, is a utility-type contract by which the United States may and proposes in perpetuity to control and distribute said waters from Friant Dam through the Madera Canal to the lands of Madera Irrigation District, and that said contract is in no sense a repayment contract and is in no sense a contract under which Madera Irrigation District and/or the landowners within Madera Irrigation District are entitled to any credit

upon the repayable construction costs of Friant Dam or the Friant-Kern Canal or any of the works used or useful in the delivery of water to Madera Irrigation District.

(2) That said Contract, Exhibit "A" attached to the plaintiff's complaint, does not and can not give or recognize [fol. 472] any right in Madera Irrigation District and/or the landowners within Madera Irrigation District to any continued delivery of water beyond the term of 40 years as provided in said contract and that any right to water under said contract is not appurtenant to any of the lands within Madera Irrigation District and is not a permanent right to the use of said water, and that the United States is entitled upon the termination of said contract to require negotiation of a new contract for continued delivery of water from said project upon such terms and conditions as the United States may then determine.

(3) That the United States is entitled to and may attach as a condition to the use of water within the boundaries of Madera Irrigation District, that water may not be served by Madera Irrigation District for industrial or domestic purposes and that the United States may in connection with the delivery of project water prescribe the amount of acreage which may be owned by any one person and that the United States may require all landowners within Madera Irrigation District to select from lands held, had, owned and used by them, limited acreages, and that if the landowner does not select the acreage he will retain, that it will require the Board of Directors of Madera Irrigation District to make the selection for the landowner and that if the Board of Directors does not make the selection, that the Secretary of Interior will make the selection for and on behalf of the landowner and that unless the landowner [fol. 473] agrees and consents to the sale of the excess land over and above the limited acreage at a price in which the landowner has no voice, that the landowner may not receive any water for that excess acreage and that he may not receive water for any of his land unless he has made the selection of the so-called "non-excess" land that he will retain. That in the Madera Irrigation District, the Bureau of Reclamation has notified the landowners of

the Bureau's present requirement to make such selection and to execute contracts with the United States for the sale at the direction of the United States and at the price fixed by the United States of the so-called "excess land" and has notified the landowners that they may not receive water for any of their lands except by compliance with these directions.

(4) That the Reclamation Project Act of 1939 authorized and empowers the Secretary of Interior to apply such of the terms and provisions of the reclamation laws of the United States as are unrepealed, commencing with the Reclamation Act of 1902, as said Secretary from time to time may determine relative in particular to those matters hereinafter referred to and recited.

XXXI.

That the Court finds that it is not true that the Reclamation Project Act of 1939 and/or Section 9 (e) thereof, as passed and adopted the Congress of the United States, was intended to or understood to change the Federal Recla- [fol. 474] mation laws with respect to the matter, of requiring the use by the Secretary of Interior and Bureau of Reclamation of 40-year repayment contracts that would provide for the return to the United States within a period of 40 years, without interest, of that portion of the capital construction costs of said Central Valley Project allocated by said Secretary of the Interior to irrigation and assigned by him for return to the Federal Treasury by the water users, including the landowners of plaintiff Madera Irrigation District. The Court finds that the theory of the utility-type contract withholding and denying a permanent and appurtenant water right, requiring renegotiation and not providing a credit for construction costs to water users' organizations and to plaintiff Madera Irrigation District and its landowners, on the Central Valley Project, was not made known or presented to the said committees or the said Congress and cannot be said as a factual matter to have been intended by Congress in the passage of said Reclamation Project Act of 1939, or any part thereof and that in fact, it was understood and intended that the pas-

sage of the Reclamation Project Act of 1939 and all parts thereof did not and would not in anywise conflict with or change the basic reclamation laws of the United States requiring and providing for repayment contracts returning to the United States the reimbursable cost of construction of the Central Valley Project allocated or allocable to irrigation and repayable by the water users within a period of 40 years, plus a development period of not to exceed [fol. 475] ten years.

XXXII

That the construction, operation and maintenance of works within the Central Valley Project of California by the United States, including the construction of distribution systems for the use of water by local districts, was authorized in 1937 by special Act of Congress, as amended; that at the time of passage of said Act and at all times subsequent thereto, there have been and now are no irrigable public lands of the United States subject to reclamation by use of irrigation water from said project; that the United States is not the owner of any lands within the service area of said project upon which water can or will be applied to beneficial use; that said special Acts, as amended, did not and do not include any provisions or in anywise provide for the application to said project, or any part thereof, of any acreage limitation, as such term "acreage limitation" is used in these findings.

That the provisions of said special Act, as amended relative to reimbursement to the United States of the reimbursable cost of said project relate only to the reimbursement of the United States in the manner provided by the Federal Reclamation Laws and were not intended to conflict with the State law or to deprive landowners within said project of property or property rights.

XXXIII

The Court finds that with respect to the so-called acreage [fol. 476] limitations contained in Articles 28, 29 and 30 of said proposed contract, said provisions and each and all of the same relative to the restriction upon delivery of

water to the so-called excess lands and in relation thereto, are impossible of application, use and enforcement and the use and application and enforcement of said provisions is unworkable, impracticable, arbitrary and amounts to the taking of property without due process and without compensation.

XXXIV

That the Secretary of Interior in constructing, operating [fol. 477] and/or maintaining said project, is under mandate from the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, in the acquiring of any right to the use of water to acquire the same pursuant to the laws of the State of California relating thereto, and in operating said Project, to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation, and that when waters from the Project are delivered by the United States to a district, other than pursuant to a contract whereby said district seeks delivery of surplus project water to meet its temporary requirements, and such water is applied and beneficially used in the irrigation of district lands, the district and the landowners therein acquire a right in the water which is a vested interest in real property appurtenant to the lands irrigated in accordance with the laws of the State of California, limited only by continued beneficial use and such reasonable conditions as may be lawfully imposed by the State Engineer; and the Court finds that plaintiff district and the landowners therein are entitled to receive, and have received, delivery of project water from the United States, not as temporary surplus project water but as a continuous supply of project water, and that plaintiff District and the landowners therein have acquired a vested right in the water, and to the continued delivery of water from the Project for beneficial use on all district lands, as an appurtenance [fol. 478] to the lands irrigated, limited only by those conditions reasonably to be imposed in accordance with State law through the Office of the State Engineer.

XXXV

That the State of California is one of the United States of America and appears in this proceeding in its sovereign, governmental and proprietary capacity as such State, in its own interests and for the protection of its own rights; also as parens patriae, in the interests of and for the protection of all of its citizens, residents, landowners and water users and its agency, the plaintiff district and to protect the integrity and proper application of its Constitution and Laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust herein described, which trust relates to the use of water in the Central Valley Project herein mentioned; also as absolute owner of the corpus of the water to be used in and by the Central Valley Project and as owner of the right of reversion of any rights to the use of such water as may be forfeited or otherwise terminated for non-use or otherwise; and as trustee for the use and benefit of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project the appropriated waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which waters as co-mingled will be used for the purposes of said Project, including so-called "ex-[fol. 479] change waters" covered by the contracts heretofore made by the United States with the specified owners for the exchange of Sacramento River waters for waters of the San Joaquin River.

XXXVI

That the Water Project Authority of the State of California is a body politic and corporate, organized and existing under the laws of the State of California with the right, power and authority, among other things, to sue and be sued and appears herein pursuant to leave of Court.

This is a proceeding in rem, binding upon all parties and persons having, or claiming to have any interest in the subject matter of this proceeding.

XXXVII

That the defendant, A. D. Edmonston, is the duly qualified and acting State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California; that the Division of Water Resources is a legally constituted division of the Department of Public Works of the State of California and that the State Engineer of California is the Chief of the Division of Water Resources.

That the Division of Water Resources aforesaid is the Agency of the State of California to which application to appropriate waters of the Sacramento and San Joaquin Rivers, as hereinbefore recited, was made and before which are pending the applications for permits relative to the [fol. 480] use of said waters in the plaintiff District and other similar districts within the Central Valley Project of California.

XXXVIII

That the United States is one of the parties defendant described in the caption of plaintiff's complaint herein in paragraph II of said complaint and that the Government of the United States by congressional action has required the filing and prosecution of this proceeding.

XXXIX

The validity or invalidity of the contract marked Exhibit A attached to the plaintiff's complaint depends measurably upon whether the United States has the right to the water to be delivered by it pursuant to contract, or rights to the use thereof, or title or ownership therein; and in determining the validity or invalidity of said contract there must be found and adjudicated as to all of the interested parties to this proceeding, including all parties appearing herein, their respective rights, powers, status, relationships and duties regarding the use and control of waters within the State of California involved within the Central Valley Project and in particular those involved in the contract which is the subject of this action; that such a determination and definition of the rights, powers, status, relation-

ships and duties, of the parties hereto and the parties interested in the subject matter of the action is necessary to determine the incidence and effect of the purported contract thereon; that the correspondence between the [fol. 481] Attorney General of the State of California and the Secretary of Interior, copies whereof are attached to the amended answer of the Attorney General in this proceeding does not create, and is immaterial to, any issue concerning the validity of the contract involved herein.

XL

That it is the express plan and objective of the Secretary of Interior that the use of water throughout the Central Valley Project, including the use of water in the plaintiff District, shall be governed exclusively by contracts claimed to be authorized pursuant to the provisions of Section 9 (e) of the Act of Congress designated the Reclamation Project Act of 1939, which contracts the Secretary will require to be generally similar and comparable with that portion of the contract herein sought to be validated relating to the delivery of water. That twenty or more such contracts between the United States of America and irrigation districts and other types of water districts organized under California law generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar. That considerations of law and facts identical with or similar to those involved in the case at bar will be presented in said future validation actions.

[fol. 482] XLI

That said contract is factually ambiguous, indefinite, uncertain and lacking in mutuality, among other things, in that it fails to define, set forth or accomplish an agreement between the parties and would, if validated, preclude a future determination, except the exclusive and final determination of the Secretary of the Interior, of the rights, powers and privileges of the plaintiff District and the landowners therein, relative to such matters as water

rights, ultimate and final credit for payments made by the District and the landowners within the District under the contract, the manner and methods of assessment of lands within the District and the determination and redetermination from time to time by the Secretary of the Interior as to what terms and provisions of the Reclamations laws of the United States and what laws of the State of California are to be applied to and govern said contract and said plaintiff District and the landowners therein.

XLII

The purported contract marked Exhibit "A" and before this court for validation is indefinite and uncertain and is without sufficient separate terms and conditions as to constitute a contract, in that said contract fails to indicate and specify the provisions of the Federal Reclamation Law that are to be considered as a part of said contract and fails to eliminate the Reclamation Laws of the United States and the provisions of said Reclamation Laws that do [fol. 483] not apply to said contract and said contract fails to set forth the Reclamation Laws or other laws of the United States that are to apply to the operation of the Central Valley Project.

XLIII

That the contract herein sought to be validated does not set forth or define the relative rights and duties of the parties thereto and of the beneficiaries of said contract and the parties directly interested in and to be bound by said contract, and if validated without definition or conditions, said contract would be interpreted and enforced as meaning and being entirely different from what said contract purports on its face to be. That it has been made an issue of fact herein, and the Court finds, that there are expressed plans, objectives, claims and interpretations of the Secretary of Interior as to said contract which the Secretary of Interior and the officers, agents and representatives of the Department of Interior and Bureau of Reclamation of the United States would and will claim to be a part of and inherent in said contract and which

would and will be applied and enforced by said Secretary, Department and Bureau if said contract be validated, and this upon the claim that validation gives binding and final judicial sanction to these expressed plans, objectives, claims and interpretations of the Secretary of Interior.

In this regard the Court finds that under the said alleged contract sought to be validated, the United States, through its Secretary of Interior, the Department of Interior and [fol. 484] the Bureau of Reclamation thereof, will assert, enforce and put into effect the following:

(1) That with respect to the use of water in the Central Valley Project and in particular the use of water from the Central Valley Project in plaintiff District, no water therefrom may be used and no right to the use of water therefrom may be had or obtained, except from the United States, and then only upon such terms and conditions as shall be prescribed by the Secretary of Interior.

(2) That under the contract in question, as well as to other similar contracts with other irrigation districts within the Central Valley Project, the plaintiff, and such other irrigation districts and/or the landowners therein, do not have and cannot obtain and, in fact, will be denied with respect to the use of project water or water carried through project works, any permanent or appurtenant water right.

(3) That the use of water from the Central Valley Project, and in particular the water to be delivered to plaintiff District and other districts within the Central Valley Project, shall be governed exclusively by contracts made between the United States and plaintiff and other districts and that said contract herein sought to be validated and other similar contracts do not and will not give, and in fact do and will negative and deny any permanent or appurtenant water right and that there is no right of renewal of said contract upon its termination and that any renewal thereof, if granted, shall be upon such terms [fol. 485] and conditions as prescribed by the Secretary of Interior.

(4) That part (A) of the contract in question relating to water delivery and other similar contracts with other

irrigation districts within the Central Valley Project, are authorized and provided for under Section 9 (e) of that Act of Congress known as the Reclamation Project Act of 1939, and as so authorized and written are not repayment contracts, but are so-called utility-type contracts which withhold and deny any permanent and appurtenant water rights and which authorize the United States to operate said project in perpetuity as a utility server of water.

(5) That said contract herein sought to be validated and other similar contracts, (exclusive of that portion of said contract designated part (B) and relating to construction of a distribution system,) are not repayment contracts and do not provide for any credit to the District or landowners therein upon the repayable construction costs of said project allocated by said Secretary to Irrigation and assigned by him for return by the water users, and that the United States may continue in perpetuity to impose and collect rates and charges, thereby allowing revenue to the United States in perpetuity (over and above and in addition to operation, maintenance and overhead,) after the United States has recovered its full costs of the project allocated or allocable to irrigation and assigned for return by the water users and otherwise. That by the [fol. 486] terms and provisions of said contract Exhibit "A" attached to plaintiff's complaint, the plaintiff District and/or its landowners are not entitled to any accounting of the costs of the project or to any repayment credits.

(6) That there is no right of renewal of said contract at the end of 40 years, or other termination of said contract.

(7) That the Secretary of Interior is authorized and entitled to limit and define the acreage in any one ownership that may receive water from plaintiff District and to withhold and compel the District to withhold water from owners' lands within the District if land is in excess of the indicated single ownership acreage to be held by any single owner. That the Secretary of Interior is entitled by rule and regulation, as the sole and final determiner of controversies arising under the contract, to determine and provide for the application of rules, regulations and laws

relating to residence, occupancy, acreage limitations and forfeiture of land titles to the United States for refusal to abide by alleged acreage controls, and to deny at the discretion of the Secretary of Interior releases of lands and areas being served from restraints and restrictions claimed to exist under reclamation law, such as relinquishment of claimed acreage limitations when allocable or allocated to irrigation and to be repaid by water users applicable to agriculture have been repaid in part or in whole.

(8) That there has been delegated to the Secretary of Interior of the United States by the Legislature of the [fol. 487] State of California, the right, power and privilege to from time to time, by rule and regulation of the Secretary of Interior and/or by further contract and/or agreement with the Board of Directors of the plaintiff District and other similarly affected irrigation districts in California, to in effect legislate with respect to the rights of the plaintiff and such other similar districts and/or the landowners thereof, as to the use of water to be delivered to the plaintiff and said other districts from the Central Valley Project, with particular reference to the manner of levying assessments upon the lands within the plaintiff District and other similar Districts; the manner and method of apportioning and delivery of water to the landowners within the plaintiff and other similar districts and that there has been delegated to the Congress of the United States by the Legislature of California, the right, power and privilege of, by Congressional Legislation, from time to time in the future changing, altering and amending the rights of the plaintiff District and the landowners therein and of the parties appearing and interested in this proceeding, upon the basis that said delegated right, power and privilege is by said contract and contracts authorized and provided for and are a part of the rights, powers and privileges of the Secretary of Interior and the Congress of the United States under said contract without regard to the constitutional and statutory provisions governing delegation of such powers.

(9) That by virtue of the terms and provisions of said [fol. 488] proposed contract Exhibit "A", and in partic-

ular the provisions thereof relative to so-called surplus, seepage, or waste waters, the plaintiff District and its Board of Directors will be deprived of the right, power and privilege of distributing, delivering and disposing of the water which it has acquired under the terms of said contract as said District would be entitled to do under California law, and that as to such surplus, seepage and/or waste water, that title thereto is by said contract vested in the United States so that the United States may control underground waters within said project.

XLIV

The portion of the contract herein sought be validated which relates to the delivery of water as distinguished from the construction of the local distribution system, does not contain any statement of the amount of the share of the construction costs of the Central Valley Project or of the works of the Central Valley Project used or useful in serving water to the plaintiff District and which are or will be required to be repaid to the United States by the plaintiff District and that said contract does not contain any provisions or terms for crediting to the plaintiff District and/or the landowners therein of any of such costs as may be repaid by the plaintiff District and/or the landowners therein when paying $3.50 per acre foot for Class 1 water and/or $1.50 per acre foot for Class 2 water. That said contract with respect to the furnishing of water does [fol. 489] not contain any provisions relative to consideration of that part of the costs of the Central Valley Project in relation to construction of works connected with water supply and which such costs have been allocated to irrigation. That said contract in that respect is indefinite and uncertain and ambiguous and purports to leave the matter of that part of the construction costs of works connected with water supply and allocated to irrigation to the discretion of the Secretary of Interior and to likewise leave to the discretion of the Secretary of Interior the application or non-application of credits in favor of the plaintiff District and/or the landowners as to that part of the construction costs of works connected with water supply and allocated to irrigation.

That as a matter of fact the Secretary of Interior did make and report to the President and the Congress of the United States a determination with respect to the Central Valley Project of California as follows: The estimated cost of the proposed construction of the Central Valley Project of California (independent of the cost of construction of local distribution systems) was fixed at $384,314,000.00 made up of the following items: Irrigation, including Contra Costa distribution system and canal capacity for future water, $221,551,600.00; power $104,143,600.00; municipal water and industrial water $9,091,800.00; navigation $18,083,000.00; flood control $31,444,000.00, total allocations $384,314,000.00. That the features of the Central Valley Project included within said costs were and are [fol. 490] as follows: Shasta Dam and Reservoir, Shasta Power Plant, Keswick Dam and Reservoir, Keswick Power Plant, Delta Cross-channel, Contra Costa Canal System, Delta-Mendota Canal, Friant Dam and Reservoir, Madera Canal, Friant-Kern Canal, Delta Stream Electric Plant, Transmission System, Water Rights and miscellaneous, Contra Costa Distribution System. That at said time the Secretary of Interior determined and estimated the costs of the major works of said Central Valley Project, which could and can be properly allocated to irrigation and probably be repaid by the water users, and determined that of the amount aforesaid allocated to irrigation, the farmers should repay and it would be within their ability to repay a sum not exceeding $3.50 per acre foot for Class 1 water and a sum not exceeding $1.50 per acre foot for Class 2 water and that the total burden to be borne by the farmer for irrigation water delivered canal-side or river-bank-side including expenses of operation, maintenance and replacement, should not exceed $58,545,475.00 (including $3,074,600.00 for Contra Costa Distribution System). That the balance of the costs of the Central Valley Project were allocated as follows: The balance of the costs allocated to irrigation were allocated to be repaid from power revenues, i.e., at said time 27 percent of the cost allocated to irrigation was to be repaid by the farmer and 73 percent of the costs allocated to irrigation was to be repaid from power revenues and by municipal and industrial

[fol. 491] water users. The amounts allocated to power were to be repaid by power and the amounts allocated to municipal and industrial water users were to be repaid by such users and the amounts allocated to flood control and navigation were to be borne by the federal government as non-reimbursable items.

That the Secretary of Interior and the Congress of the United States did accept said allocations and determinations and said amounts have been fixed as the maximum amounts to be paid by the irrigation water users within said project for reimbursement to the United States of its properly reimbursable costs allocated to irrigation and to be repaid by the water users. That the plaintiff District and the landowners within the plaintiff District and the landowners of the 19,500 acres excluded from said District, are entitled to have water delivered from said Central Valley Project to said plaintiff District and to said landowners within the framework of said allocated costs and at a charge not to exceed $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, which payments, after being credited to reasonable and necessary operating, maintenance, and replacement costs are required to be applied to the plaintiff District's and landowner's portion of the necessary and reasonable construction costs of the works of the Central Valley Project used or useful in delivering water to the plaintiff District and landowners and when said reasonable and necessary construction costs have been so paid, the plaintiff District and [fol. 492] said landowners are entitled to be free of further construction cost charges and plaintiff District and said landowners are entitled to an accounting upon the reasonable and necessary construction, operation, maintenance and replacement costs and for the credits to which plaintiff District and said landowners are entitled hereunder.

XLV

That the contract herein sought to be validated in this proceeding does not provide for or recognize any right to acquire a perpetual and appurtenant water right to the use of water upon the part of the plaintiff District and/or

its landowners and does not provide any right of renewal at the end of forty years, and in fact, it is the expressed plan and objective of the Secretary of Interior to construe said contract as not giving or allowing a perpetual or appurtenant water right or any right of renewal, even though the waters in process of being appropriated for the benefit of the plaintiff District and the landowners therein be applied to beneficial use thereon.

That it is the expressed plan and objective of the Secretary of Interior to construe and enforce said contract as not providing any credit to the plaintiff District or the landowners within the plaintiff District of any construction cost component in the rates provided to be paid by the plaintiff District to the United States for said water to be delivered thereunder and to construe and enforce said contract as not [fol. 493] constituting a repayment contract providing for the return to the United States Treasury of a portion of the construction cost obligation of said Central Valley Project allocated to irrigation and assigned for return by said District as provided by the Federal reclamation laws, or to any unit or units of said Central Valley Project used or useful in serving water to the plaintiff District. That it is the expressed plan and objective of the Secretary of Interior to construe and enforce said contract as not constituting a repayment contract and as not requiring or providing for or allowing any credit on an appropriate share of the fixed charges taking anywise into consideration that part of the construction costs of the works used and useful in the delivery of water to the plaintiff District and which said costs are allocated or allocable to irrigation, and to construe, enforce and apply said contract as not entitling the plaintiff District or the landowners therein to any credit or credits upon said project construction costs allocated or allocable to irrigation.

XLVI

It is the expressed plan and objective of the Secretary of Interior to interpret, construe, apply and enforce said contract, if validated, as being a so-called "utility-type" contract, to wit: a contract entitling the United States to keep and maintain the possession of all of the major

works and canals of the Central Valley Project in perpetuity and to deliver water from said Project to the plaintiff [fol. 494] District and other irrigation districts and similar public agencies receiving water from said Project, without regard to the laws of the State of California and so as to enable the United States to in perpetuity dictate the terms and conditions for the delivery of water from said works in said Project and in particular to the plaintiff District, and in doing the foregoing, to deny to the plaintiff District and/or any landowners therein, or other similar districts and landowners therein, any permanent or appurtenant water right or right of renewal of the aforesaid contract.

XLVII

That it is the expressed plan and objective of the Secretary of Interior to interpret, construe, apply and enforce said contract with respect to the matter of limiting and controlling the delivery of water to the plaintiff District from said project so as to limit the acreage to which water may be delivered to any individual landowner by applying from time to time and under rule and regulation of the Secretary of Interior, acreage and other limitations so as to prevent the delivery of water by the Irrigation District to landowners within the Irrigation District in any instance where a single man owns more than 160 acres within the Central Valley Project, or where a man or wife dies and the survivor becomes the owner of more than 160 acres within the Central Valley Project or where a married man and wife own more than 320 acres within the Central Valley Project; that the Secretary of Interior contends that the [fol. 495] Federal Reclamation Laws contain provisions purportedly authorizing the Secretary of Interior to impose other limitations as to the use of water under the various provisions of the unrepealed reclamation laws, including provisions thereof requiring residence on or near the land to be served with water and requiring occupancy of the land by the landowner to be served with such water and requiring forfeiture to the United States for the failure or refusal of a landowner to observe the requirements of the Secretary of Interior with respect to acreage limitations, residence and occupancy; that it is the ex-

pressed plan and objective of the Secretary of Interior to require a landowner, as a prerequisite to obtaining any water for any of his land within the District to "voluntarily" select the 160 acres, if single, or the 320 acres, if married, which he will retain from his land holdings in excess thereof and to refuse and prevent the delivery of water to lands held by a single person in any one ownership in excess of 160 acres, or if married, in excess of 320 acres, until and unless said landowner "voluntarily" signs a recordable contract agreeing to sell the so-called "excess acreage" at a price to be fixed by the Secretary of Interior, without regard to the availability of water for said land, although enforcing and requiring the Irrigation District to assess all land owned by the individual landowner within the District as in the case of the assessment of so-called non-excess lands, and of refusing and preventing the de- [fol. 496] livery of water to any land within the District in the event that the landowner shall have failed, neglected or refused, or be unable to pay an annual assessment levied by the District on his said lands, although the landowner may have paid all other charges required by the District for the delivery of water and to apply provisions of the reclamation law claimed to authorize and entitle the Secretary of Interior to fix the acreage which may be owned by any one person to that area or acreage which the Secretary may deem sufficient for a family-size farm, although less than 160 acres.

XLVIII

That the contract in question contains no statement, criteria, yardstick or requirement for the payment of the maximum amount of money to be payable to the United States for construction costs for the major works used or useful in connection with the Central Valley Project for the delivery of water to the plaintiff District, and that the election notice relative to the election held by the plaintiff District for the approval or disapproval of the contract in question does not contain a statement of the maximum amount of money to be payable to the United States for construction purposes relative to any of the major works of the Central Valley Project used or useful to the delivery of water from said Project to the plaintiff District.

XLIX

That the Secretary of Interior contends that the Federal [fol. 497] Reclamation Laws contain provisions purportedly authorizing the Secretary of Interior under rule and regulation of the Secretary of Interior to be made from time to time, to: (1) reguiate and require crop practices within the plaintiff District to be approved by the Secretary; (2) regulate and limit the size of farm units within the plaintiff District to not less than 10 or more than 160 acres; (3) require residence of the landowner upon his land or occupancy thereof by him within the plaintiff District; (4) limit delivery of water to farm units smaller than 160 acres within the plaintiff District; (5) determine the irrigability of land within the plaintiff District and to otherwise regulate and direct operations within the plaintiff District by the plaintiff District and the landowners therein under the guise of procuring and obtaining the solvency of said project, all of which would be and are without authority or warrant in either Federal or State Law and in violation of the rights and interests of the landowners within said Madera Irrigation District and would amount to the taking of property without due process and without compensation.

L

That the Water Project Authority of the State of California has made no contract with the United States or any agency thereof by the terms of which the United States is given the possession of said Central Valley Project or the right to make any contract or contracts with individual irrigation districts to be served within said project and [fol. 498] that the only contract existing between the Water Project Authority of California and the United States relative to the construction, use and operation of said Central Valley Project and/or the collection of revenues therefrom and the application of the same to the costs of said project is as contained in that certain contract as set forth in paragraph XIII of these findings.

LI

That the contract herein sought to be validated, if validated and applied as contended for by the Secretary of Interior and the United States of America, would take private property of the plaintiff District and the landowners therein, without due process and without compensation therefore.

LII

That the United States, acting by and through the Bureau of Reclamation of the Department of the Interior, as assignee of the applications to appropriate water herein found to be made by the Department of Finance of the State of California and assigned by said Department to the United States, and by reason of the trustee relationship of the United States relative thereto, is under a duty and obligation to perfect the applications to appropriate water made by the Department of Finance of the State of California and assigned to the United States as herein found, and to perfect the other filings and applications made for the benefit of the Central Valley Project held in the name of the United States, or any of the agencies there-[fol. 499] of, so as to enable the State Engineer of the State of California in the exercise of his lawful discretion in accordance with and pursuant to State Law to cause appropriate permits and licenses to be issued in connection with such appropriations of water for the use and benefit of the acreages to be served, including in particular the lands within Madera Irrigation District and the said 19,500 acres excluded from the District; and the water users and landowners therein; and that the United States has failed and neglected to perform this duty.

LIII

That said contract, Exhibit "A", if validated would require and the Secretary of Interior would so apply and enforce said contract, as requiring plaintiff District to assess all lands within the boundaries of said District to pay its obligation to the United States, as well as other District costs, and the lands of the answering landowner

defendants herein with the other landowners of the District are and would be liable for all such costs and at the same time said contract would be by the Secretary and said plaintiff District enforced as depriving said landowners, notwithstanding such assessments, of their ordinary rights to water as provided by irrigation district law within the State of California, thereby depriving the answering landowner defendants and other landowners within the plaintiff district of their property without due process and without compensation.

LIV

[fol. 500] That there are no irrigable public lands of the United States subject to reclamation within the service area of the Central Valley Project of California.

LV

The provisions of Article 26 of said purported contract marked Exhibit "A" and before this Court for validation, if validated would constitute a delegation of power of the Board of Directors of Madera Irrigation District to the United States.

LVI

The failure to designate by the terms of said contract marked Exhibit "A" which of the Federal Reclamation Laws are applicable and which of said Federal Reclamation Laws are not applicable to said purported contract and the placing by the terms of said purported contract in the Bureau of Reclamation of the Department of Interior, the power to designate which of said Federal Reclamation Laws are applicable or not applicable constitutes a delegation of power by the Board of Directors of Madera Irrigation District to the United States, its officers and agents.

LVII

The answering landowner defendants, and each of them, and all of the landowners within Madera Irrigation District are entitled to their pro-rata share, for all of their lands, of the water and water rights owned and held by Madera Irrigation District; the answering defendants who

[fol. 501] own more than 160 acres as individuals, or 320 acres as husband and wife, including defendants Warren Ocheltree and Clarice A. Ocheltree, his wife, Jerold Ocheltree, Hazel O. Ocheltree, Phillip Albonico and Jane E. Albonico, his wife, and others, are more particularly set forth in their respective answers on file herein, own lands within the boundaries of Madera Irrigation District which are "excess lands" as said term is described in Article 30(a) of said purported contract marked Exhibit "A" and before this Court for validation; the provisions of said Articles 28, 29 and 30 of said purported contract, purport to deny and deprive said answering defendants "excess lands", said lands' pro-rata share of the water distributed by Madera Irrigation District; said deprivation constitutes a breach of trust heretofore alleged and constitutes taking of property without due process and without just compensation or any compensation.

LVIII

The contract dated the 24th day of May, 1939, between the United States and the plaintiff District, and marked Exhibit "B" attached to the second amended complaint, obligates the United States to afford plaintiff District the opportunity to execute with the United States a contract recognizing a vested right on behalf of the landowners in said District to the continued and permanent delivery of water from the project, for beneficial use upon and appurtenant to all of the lands within said District as said District was then constituted in accordance with the laws of the State of California; the provisions of the purported [fol. 502] contract marked Exhibit "A" and before this Court for validation do not give or purport to give, but in fact purports not to give a permanent, appurtenant water right to the lands within the boundaries of said District, as said boundaries were constituted on the 24th day of May, 1939, or to the lands within the boundaries of said District as the boundaries of said District were constituted on the purported date of execution of said contract marked Exhibit "A"; said purported contract marked Exhibit "A" purports to limit the said water right for a period of forty years.

LIX

The purported terms and provisions of said purported contract marked Exhibit "A" and before this Court for validation, as set forth in Article IV on page 6 of said Exhibit as attached to the Second Amended Complaint, which purport to recognize the right of the lands within the District to a permanent and perpetual and appurtenant water supply are indefinite and uncertain and do not contain any provision relative to the making of a future contract in recognition of said rights, or the terms and conditions for renewal of said contract.

LX

If the purported contract marked Exhibit "A" and before this Court for validation were validated, the provisions of Article 4 of said Exhibit "A" which provide that said purported contract marked Exhibit "A" shall constitute full satisfaction of the District's right under Article 14 of said [fol. 503] contract marked Exhibit "B" dated the 24th day of May, 1939, would deprive these answering defendants of property and property rights without due process and without payment of just compensation therefor; the terms and provisions of said contract marked Exhibit "A" do not constitute a full satisfaction of the District's rights under Article 14 of the contract marked Exhibit "B"; the rights provided for and contained in said contract marked Exhibit "B" are perpetual and appurtenant to all of the lands within the boundaries of the District and as the boundaries were constituted on the 24th day of May, 1939, and as they are now constituted, including the land of all of these answering defendants; the terms of the purported contract marked Exhibit "A" are limited in its application and scope by reason of Articles 28, 29 and 30; the contract marked Exhibit "B" does not in any way limit the use or distribution of water to be supplied to Madera Irrigation District pursuant to the terms of the contract marked Exhibit "B".

LXI

Prior to the proposed execution of the purported contract marked Exhibit "A" and before the Court for valida-

tion and during the negotiation of the terms of said purported contract, the Board of Directors of Madera Irrigation District and its agents, servants and employees, as they were then constituted, requested that the United States execute a contract with the District pursuant to the terms of the 1939 contract, which would not contain the land limi-
[fol. 504] tation provisions as more specifically set forth in paragraphs 28, 29 and 30 of said purported contract marked Exhibit "A"; the United States failed, neglected and refused to execute such a contract with the Board of Directors of Madera Irrigation District and refused to delete the said excess land limitation provisions, as more specifically set forth in paragraphs 28, 29 and 30, from said purported contract and refused to execute any contract or to supply surface irrigation water to the lands of Madera Irrigation District without the incorporation therein of said excess land limitation provisions and the said paragraphs 28, 29 and 30.

LXII

The terms and conditions of the purported contract marked Exhibit "A" and before this Court for validation relative to the excess land limitations as contained in paragraphs 28, 29 and 30 therein and the failure of said purported contract to extend to Madera Irrigation District credit upon construction costs and the failure of said purported contract to specify what portion of the construction costs of the Central Valley Project are attributable to and are to be paid by the Madera Irrigation District and the failure of said purported contract to give to Madera Irrigation District for all of the lands located therein, or any of the lands located therein, any permanent right, are contrary to the terms of the contract marked Exhibit "B", dated the 24th day of May, 1939; the imposition of said terms and conditions are without right and are in violation of the
[fol. 505] said contract marked Exhibit "B" and dated the 24th day of May, 1939; there is no additional consideration from the United States to Madera Irrigation District to support the imposition of said terms and conditions of said contract marked Exhibit "B".

LXIII

The sole and entire operation of the Madera Irrigation District in relation to the lands within the boundaries of said District would be required to conform with and be subject to the purported contract marked Exhibit "A", if said contract now before this Court were to be validated; if sections 28, 29 and 30 of the purported contract marked Exhibit "A" and before this Court for validation, were valid and in force and effect, said provisions would constitute a restraint and restriction upon the right to inherit or succeed to property and/or property rights; said provisions of said purported contract constitute a restraint upon testamentary disposition of property and/or property rights.

LXIV

That in considering the portions of the purported contract marked Exhibit "A" and before this court for validation, which relate to the construction of a distribution system as is more particularly set forth in part B thereof, the Court finds that it is true:

1. That the provisions of part B are indefinite and uncertain, in that it cannot be ascertained from the provisions [fol. 506] of said purported agreement what the United States agrees to build for the sum of $8,320,000 or the type, nature and extent of the lateral system to be constructed by the United States.

2. That the United States does not agree therein to perform or accomplish a specified result; it only agrees to expend the sum of $8,320,000 or so much thereof as the United States deems expedient or necessary toward the construction of a distribution system and that said distribution system shall be deemed completed within the meaning of said purported contract at such time as the United States notifies the District in writing that the total expenditures have been made; that the United States represented to the Board of Directors of Madera Irrigation District and all of the landowners therein, that a complete distribution system to each 160 acres of irrigable land within the boundaries of the District could be constructed by the United

States for the sum of $8,320,000; that subsequent to the purported execution of the contract before the Court for validation, the United States informed the Madera Irrigation District and the Board of Directors thereof, that the cost of a lateral system to each unit of 160 acres as described in said purported contract in part B thereof, would cost in the neighborhood of $15,000,000 instead of the sum of $8,320,000; that prior to execution of said purported contract now before the court for validation the United States further informed the Board of Directors of the Madera Irrigation District that the sum of $8,320,000 would [fol. 507] supply a complete lateral system to each unit of 160 acres or a total area of 112,000 acres of irrigable land within the District; that subsequent to the execution of said purported agreement marked Exhibit "A", the United States through the Bureau of Reclamation, informed the Board of Directors of said District and said District and all of the landowners therein, that the sum of $8,320,000 would provide a system which would deliver water to each 160 acre unit for only 33,000 acres of irrigable land within the boundaries of the District; that the Board of Directors of Madera Irrigation District had purportedly authorized the United States, acting by and through the Bureau of Reclamation, to proceed with the construction of a distribution system to each 160 acre unit of a total of approximately 33,000 acres of land and to expend the entire sum of $8,320,000 therefor; that said purported authorization to construct a partial distribution system for the sum of $8,320,000 instead of a complete distribution system for the sum of $8,320,000 was not presented to the voters of Madera Irrigation District for their approval or disapproval and was not consented to by the voters of Madera Irrigation District; that the construction of a partial distribution system for the sum of $8,320,000 to 33,000 acres of irrigable land instead of a complete distribution system to 112,000 acres of irrigable land as originally contemplated under the terms of said purported contract and under the representa- [fol. 508] tion made by the United States and accepted by said District and all the landowners therein, constitutes a fraud upon the landowners of Madera Irrigation District.

3. That the terms, covenants and conditions set forth in part B of said purported contract marked Exhibit "A"

wholly fail to protect the interest of and the property rights of the landowners within the boundaries of Madera Irrigation District and in this respect the execution of said purported contract constituted an abuse of discretion and a fraud on the part of said Board of Directors of said Madera Irrigation District and was ultra vires and void.

LXV

Subsequent to the purported execution of the purported contract marked Exhibit "A" and before this Court for validation, the sole and entire operations of Madera Irrigation District in relation to the lands within the boundaries of said District, including the lands of these answering defendants, has been pursuant to and in conformity with the said purported contract marked Exhibit "A"; the Board of Directors of Madera Irrigation District have levied assessments upon all of the land within the boundaries of Madera Irrigation District, including the lands of the answering defendants herein and including the land of the answering defendants defined as "excess lands", which said assessments have been collected by the Board of Directors of the Madera Irrigation District and have been paid to the [fol. 509] United States pursuant to the purported terms of the purported contract marked Exhibit "A" and before this Court for validation; the answering defendants have paid all assessments levied upon their lands by Madera Irrigation District but that in paying said assessments, have not consented to nor acquiesced in the payment of said funds derived by said assessments by Madera Irrigation District or the Board of Directors thereof, to the United States, pursuant to the purported terms of the purported contract marked Exhibit "A"; as to the excess lands of the answering defendants as set forth in the description thereof in their respective answers on file hereto and as defined in said purported contract marked Exhibit "A", the assessments so levied by Madera Irrigation District were assessments without benefit to said lands and were illegally, unconstitutional and void and deprived the answering defendants of property without due process and without payment of just compensation.

LXVI

The purported execution by the Board of Directors of Madera Irrigation District of the purported contract marked Exhibit "A" and before this Court for validation, constituted an act contrary to the objects and purposes for which Madera Irrigation District was formed, which object and purpose is to benefit all of the lands within the District by obtaining and distributing such water as may be necessary for the irrigation thereof, thus enabling each landowner within the District to have for his land the benefit [fol. 510] of a common irrigation system.

LXVII

No consent to the purported provisions of the purported contract marked Exhibit "A" and before this Court for validation, was given by the answering defendants or any of them.

LXVIII

That the defendant Jerold Ocheltree (and other landowner defendants appearing herein) have been advised by the Bureau of Reclamation of the United States, Department of Interior, that in order to obtain any water for their excess lands (as said lands are defined in said contract) that they will be obligated to sell, or authorize the Secretary of Interior by a recordable contract between said defendants and the United States to sell all of their lands in excess of 160 acres (or in excess of 320 acres if married) and to designate their lands not in excess of 160 (or 320) acres upon which each desires to obtain water, and that without taking such action they will not be delivered any water by the District for said excess lands.

Conclusions of Law

From the Foregoing Facts, the Court Concludes:

I.

The Court concludes that the contract of May 14, 1951, between the Madera Irrigation District and the United

States of America, acting by the Bureau of Reclamation, is [fol. 511] invalid and unenforceable. This conclusion follows and is based upon the facts found and set forth herein, and upon each fact as found by the Court, and is independent of any other of the conclusions, or portions thereof.

II

Under the Constitution of the State of California, and in particular Article XIV, Section 3 thereof, and by the law of the State of California, this State, as sovereign, is vested with title to, ownership and control of all water within the State for and on behalf of the People of the State; it is the policy of this State that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable; appropriation of water may be made only for a beneficial use, in accordance with State Law, and then only for the duration of such beneficial use; and when such use ceases, the right thereto is forfeited to the State, and the right to the use thereof may again be acquired in the manner prescribed by State Law; and the right to the use of water for irrigation shall be appurtenant to the land irrigated, such right being a form of real property. Under the Constitution of the United States, and in particular the Tenth Amendment thereto, no Federal enactment, rule or regulation may validly override the said provisions and requirements of the State Constitution and Law. The Congress of the United States has explicitly so recognized in the Federal Reclamation Act of 1992, Section 8, and other legislation.

[fol. 512]

III

The United States is not the owner of the water supplied and to be supplied from the Central Valley Project and which is the subject-matter of its contract with the District. The interest of the United States in such water is limited in all respects by the law of this State ("law" being hereinafter used to include, unless otherwise indicated, the Constitution, statutes, rules and regulations, and court and administrative decisions of this State). As a storer and carrier of the water delivered from the Central Valley

Project, the United States to the extent that such water may be available, is obligated to deliver such water, to all beneficiaries of said project within the Sacramento and San Joaquin Valleys, including the plaintiff District and the landowners therein and the owners of the said 19,500 acres excluded from said District. The United States is obligated to acquire from the State of California acting through the State Engineer, rights to the use of water sufficient for the purposes of the Central Valley Project, and the use which the United States may make of such water is limited by the conditions which the State Engineer may impose, under State Law relating to the appropriation of water, in any permit which may be issued to the United States for purposes of the Central Valley Project. That nothing contained in these findings and conclusions is intended to or shall in any wise, interfere with, restrict or limit the lawful discretion of the State Engineer in acting [fol. 513] upon such applications, and in the issuance of permits and licenses pursuant thereto, and in conditioning the same in the public interest.

IV

The Madera Irrigation District is lawfully organized and existing pursuant to the laws of the State of California, but it has the capacity to contract with the Federal Government only to the extent permitted by State law, and any such contract may be validated only if it is consistent with State law.

Invalidity of Election

V

That the notice of election published by Madera Irrigation District for the election to be held on the 9th day of May, 1951, was invalid, illegal and of no force or effect; that the election purportedly held on the 9th day of May, 1951, was improperly and illegally called; that no approval of the purported contract marked Exhibit "A" resulted from the said purported election; that said election was not duly and regularly held as provided by law; that the publication by the Board of Directors of Madera Irrigation

ing the inclusion of a contractual provision for the delivery and distribution of water under Acts of Congress and the rules and regulations established thereunder, authorizes such delivery and distribution only under acts, rules and regulations as are consistent with generally-applicable State law, and also only under valid Federal statutes, rules and regulations. Under the Constitution of the State of [fol. 534] California, and particularly Article XIV thereof, and under the Constitution of the United States and particularly the Tenth Amendment thereto, and under Section 8 of the Reclamation Act of 1902, the United States may not validly impose conditions on the delivery and distribution of water which are inconsistent with State law.

Invalidity of Contract Under Federal Law

XXXIII

Properly construed, the Reclamation Act of 1902, as amended, and other Federal laws, do not permit the United States, acting by the Bureau of Reclamation or otherwise, to impose or become a party to a contract containing the provisions and of the character set forth above.

XXXIV

The contract of May 14, 1951, is invalid and unenforceable for the fu ther reason that the Secretary of the Interior, pursuant to rule and regulation, may in relation thereto apply numerous unrepealed provisions of the Act of Congress of June 17, 1902, and acts amendatory thereof or supplementary thereto, all collectively styled the Federal reclamation laws, and generally referred to in the contract as the basis thereof; and that the application to the contract of many of such provisions would adversely and materially affect the contract and the rights of the District and the landowners thereunder.

[fol. 535]

XXXV

In addition, the contract is in violation of Federal law in the following particulars:

A. Part A of the contract purports to be a utility contract for the sale of project water, thereby implying that the United States is the owner of said water in violation of Section 8 of the Reclamation Act of June 17, 1902, which provides that the Secretary of the Interior in carrying out the provisions of the act shall proceed in conformity with the laws of the States or Territories relating to the control, appropriation, use or distribution of water in irrigation, or any vested right acquired thereunder.

B. Part A of the contract fails to comply with the repayment provisions of Federal Reclamation laws in not stating the total or any amount to be repaid by the District and its landowners of that portion of the reimbursable costs of the project allocated to irrigation and assigned for repayment by the water users; and the contract fails to specifically credit any part of the annual rates for water to the repayment of the District's obligation for project construction costs.

C. Part A of the contract is in negation of and does not afford to the District and its landowners the opportunity to acquire a right to the permanent delivery of project water appurtenant to the land irrigated and all intendments of the contract are that at the end of 40 years no [fol. 536] project water will be delivered to the District except in the discretion of the Secretary of the Interior.

D. The provisions of Sections 28, 29 and 30 of the contract relating to excess lands are in violation of Section 8 of the Reclamation Act of June 17, 1902, in that such limitations on the acreage to which water may be delivered is in violation of the laws of the State of California.

XXXVI

Further with respect to Federal law, the contract of May 14, 1951, by its terms and provisions is unenforceable for the reason that it is indefinite, uncertain, misleading and lacking in mutuality regarding the relationship of the parties toward each other with respect to project water and the relative rights and duties of the respective parties in connection therewith, and for the reason that it denies

District of false and misleading statements concerning the provisions of the contract constituted a fraud; that the true results of said election cannot be ascertained.

VI

That the water rights, real property and other proper-
[fol. 514] ties and in particular the land, ground and site upon which Friant Dam is now built, together with a gravel pit and a supply of gravel and material for construction of said Dam, together with rights of way and easements and water rights and filings upon waters of the San Joaquin River, as more particularly set forth and described in contract dated the 24th day of May, 1939, were acquired and held by the Board of Directors of Madera Irrigation District in trust for all of the landowners within the boundaries of said District as said boundaries were then constituted; that said boundaries then contained all lands of the answering defendants herein.

VII

That any right, title or interest which the United States acquired under and by virtue of said contract dated the 24th day of May, 1939, in and to said properties and/or water and/or water rights was and is held in trust by the United States for the benefit of all landowners within Madera Irrigation District and the owners of the 19,500 acres excluded from said District, including these answering defendants and/or their predecessors in interest.

VIII

That subject to the provisions of the trust hereinbefore and hereinafter set forth and the express limitations upon the terms of a contract between the United States and Madera Irrigation District, hereinbefore and hereinafter set forth respecting the contract before the Court, the con-
[fol. 515] tract dated the 24th day of May, 1939, between Madera Irrigation District and the United States is a valid and existing agreement.

That the right to receive a water supply pursuant to the contract dated the 24th day of May, 1939, was held by Madera Irrigation District as trustee for the use and benefit of all of the landowners within the District, together with the landowners of the 19,500 acres of land excluded from said District; that all of the landowners within Madera Irrigation District, together with the landowners of the said 19,500 acres of land and including all of these answering defendants were and are the beneficiaries of said trust. That the purported transfer by Madera Irrigation District to the United States, in the document dated the 14th day of May, 1951, and before this Court for validation, of the pro rata share of the right to receive a water supply pursuant to said 1939 contract for the 19,500 acres to the United States would consfitute taking of property without due process of law and without just compensation; that the quantity of water purportedly transferred by the contract before this Court for validation to the United States and the right, if any, to the use and benefit thereof held by the United States by and through the Department of Interior of the United States Bureau of Reclamation, is held in trust for the owners of said 19,500 acres of land.

[fol. 516]

X

Prior to the execution of the contract dated the 24th day of May, 1939, and at all times subsequent thereto, Madera Irrigation District held as trustee for all of the landowners within the boundaries of said District, including the landowners of the said 19,500 acres excluded from said District, a vested right to a permanent supply of water from the San Joaquin River and other sources, appurtenant to all of the lands then in said District, subject to and in accordance with the laws of the State of California, by reason of applications to appropriate unappropriated water from said river and other sources duly filed by the said District or its predecessors, with the State Engineer, Division of Water Resources of the State of California; that the purported substitution by the contract marked Exhibit "A", dated the 14th day of May, 1951, now before the Court for

validation of a temporary right to receive project water from the United States in accordance with the terms of said contract marked Exhibit "A", in lieu of said appropriative rights to a permanent water supply, initiated by said District, in accordance with State law, would constitute a deprivation of property to the landowners within Madera Irrigation District and the landowners of the said 19,500 acres of land excluded from Madera Irrigation District to the use of said waters by reason of the limitations imposed upon them by Articles 28, 29 and 30 of the contract before this Court, without due process of law and without [fol. 517] just compensation therefor and further constitutes a breach of said trust as hereinbefore set forth.

XI

That it was agreed between the United States and plaintiff Madera Irrigation District, by the contract dated the 24th day of May, 1939, that the owners of all of the lands within the boundaries of the plaintiff Madera Irrigation District, including the 19,500 acres excluded from the boundaries of the District were and are permanently entitled to delivery by the United States of the quantities of water set forth in said contract dated the 24th day of May, 1939; that said contract right is binding upon the United States subject only to the assignment of a portion of said quantity to the Chowchilla Water District pursuant to the agreement dated the 24th day of August, 1949, accepted and approved by the Secretary of Interior of the United States on the 16th day of September, 1949; that accordingly the owners of said lands were and are entitled to the said delivery of said quantities of water without the restrictions and conditions imposed by Articles 28, 29 and 30 of the contract before this Court; that said contract right to receive said water is a continuing right to the permanent delivery of water from the project to all lands in said District; appurtenant to the lands irrigated, subject to and in accordance with the laws of the State of California; that the United States is entitled to payment therefor at the rate of not to exceed $3.50 per acre foot for [fol. 518] Class 1 water and $1.50 per acre foot for Class 2

water, which waters are defined in said contract dated the 24th day of May, 1939; that said Madera Irrigation District and said landowners, and each of them, are entitled to credit by the United States toward the payment of said lands and District's share of the construction costs of the Central Valley Project as more particularly hereinbefore found and as more specifically hereinafter concluded.

Trustee Relationship of United States; Vested Rights Acquired by Irrigation Districts and Landowners

XIII

In order for the United States to carry out the purposes of the Central Valley Project, particularly the delivery of water therefrom to project beneficiaries, including plaintiff District and its landowners, it became desirable and expedient that the State of California assign in trust to the United States for the uses and purposes of the Central Valley Project applications to appropriate unappropriated water and the water rights referred to in Findings XII, XVII, XXV, XXVI, and XXVII and also to acquire other applications and said appropriative and other rights to water referred to in Findings VI and VII and to perfect [fol. 519] all such applications by securing permits pursuant to the laws of the State of California, for the use of all such water by said project beneficiaries, including the plaintiff District and the landowners therein and the landowners of said 19,500 acres excluded from said District. All rights to the use of water heretofore acquired by the United States for purposes of the Central Valley Project, as well as all rights to the use of water in process of acquisition and to be acquired for such purposes, are held by it in trust for the beneficiaries of said project, including plaintiff District and its landowners, and the landowners in said 19,500 acres excluded from the District, all of whom have a present, vested right to the faithful fulfillment and execution of said trust. That for the last several years, water has been delivered by the United States Bureau of Reclamation to the plaintiff District and its landowners for the irrigation of lands within the District, and subject to the

laws of the State of California and the discretionary powers of the State Engineer in issuing permits and licenses, said District and its landowners, and the landowners in said 19,500 acres excluded from said District, acquired contingent, conditional and inchoate property rights to a permanent supply of project water which said rights are now vested in said landowners and who will upon the perfection of said appropriative rights in conformity with said State laws, acquire full title to the use of said water on said lands, with priority relating back to, and [fol. 520] as of the date of the applications to appropriate, perpetually appurtenant to their land and subject only to conditions lawfully imposed pursuant to State Law; that by the transfer to the United States by the District of said rights of the District to appropriate water pursuant to its applications theretofore filed with the State Engineer of the State of California, the said owners of land within said 19,500 acres so excluded from the District, and the District on behalf of its landowners, have acquired and now possess additional vested rights to a permanent supply of project water.

XIV

Any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are held in trust and dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners, and the landowners of said 19,500 acres excluded from said District; and such water is required to be delivered to such lands for use thereon and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with State law, and under the burden of repayment to the United States of the reasonable charges for storing and transporting the appropriated water as elsewhere herein set forth.

XV

The State Engineer of the State of California, in accordance with the law of this State, is Chief of the Division [fol. 521] of Water Resources, and in his official capacity

as State Engineer is authorized and directed by State law to pass upon all applications to appropriate water and in his lawful discretion to grant or to deny the same, and if granted to issue permits and licenses thereon in accordance with State law. Said State Engineer is required to insert in all such permits and licenses certain terms and conditions concerning the use of water thereunder, and in addition thereto is authorized to include therein terms and conditions which in his judgment are in the public interest relative to the use of water thereunder; and said State Engineer is also authorized to maintain actions to enjoin in appropriate proceedings any waste or unlawful use of water. If and when such permits are issued to the United States pursuant to said applications to appropriate unappropriated waters for purposes of said project as herein set forth, the United States will continue to hold such rights recognized thereby solely as trustee, and the beneficial title to such waters will be in the landowners within the service area of said project, including plaintiff District and said 19,500 acres of land excluded from said District for and on behalf of the landowners therein. The owners of any and all lands within the Madera Irrigation District and of said 19,500 acres so excluded are entitled to equal rights, without discrimination, to receive water from such project and to apply the same upon their lands, subject [fol. 522] only to conditions lawfully imposed in accordance with State Law and the payment of charges sufficient to return to the United States its due proportion of the reimbursable and returnable costs of said project.

Mandate of Federal Law to Conform to State Law; Trust Relationship

XVI

The Secretary of Interior in constructing, operating and maintaining the Central Valley Project was at all times herein subsequent to the limitation of construction of said project by the United States, and now is, under mandate from the Congress of the United States to proceed in accordance with the laws of the State of California in acquiring rights to the use of water for purposes of said

project and to hold and retain such applications, rights and interests not for its own use and benefit but for the use and benefit of the beneficiaries of said Central Valley Project, including plaintiff District and the landowners therein and the landowners of said 19,500 acres excluded from said District. The true right, title, and interest and ownership of all rights to the use of water acquired or to be acquired by the United States for purposes of said project, immediately upon the acquisition of such rights, gave and do give rise to a resulting trust, with the State of California, as the trustor, the United States, acting through the Secretary of the Interior and the United States Bureau of Reclamation, as trustee, and the landowners comtemplated (sic) to be served with water by means of such project, including [fol. 523] the landowners in plaintiff District and the landowners of said 19,500 acres excluded from said District, as the beneficiaries of such trust; and the United States as trustee for all project beneficiaries has the duty and obligation to perfect its applications to appropriate water in accordance with State law, which it has failed and neglected to do in violation of its trust.

Reimbursement to United States: Credit to District and Landowners

XVII

The project as authorized, operated and maintained by the United States is a Federal assistance program, and the Secretary of the Interior in expending Federal funds for its construction, operation and maintenance, has so done and is doing so subject to ultimate appropriate repayment by the State, or local districts and agencies thereof, of the reimbursable costs of the project in accordance with the Federal Reclamation laws.

XVIII

The United States has the right, duty and obligation to recover, in accordance with the Federal Reclamation laws, that portion of the reimbursable project construction costs allocated to irrigation and assigned for repayment by the water users, and the District and all landowners therein,

including the defendant landowners appearing herein, are obligated to pay for a proportionate share of the cost of delivery of project water, and a proportionate share of the [fol. 524] project construction costs, and in the payments made for such purposes are entitled to credit for that portion of payments which should appropriately be applied to the repayment of project construction costs.

XIX

The District and the landowners therein upon the repayment of a proportionate share of the project construction costs are entitled, subject to compliance with State law, including conditions which may be imposed by the State Engineer in permits and licenses to appropriate water, to the continued delivery of project water by the United States as a right appurtenant to all of the District lands at such rates only as may be required to cover the District's proportionate share of costs of operation and maintenance.

The District: State Law

XX

The directors of the District in the management of the affairs thereof, and in the delivery of water made available by the project to the landowners therein, are governed by the laws of the State of California relating to irrigation districts.

XXI

The District is an organization created and governed by and for the electors thereof and bears a trust relationship to the landowners therein and in carrying out such trust is obligated by State Law relating to irrigation dis- [fol. 525] tricts, to deliver water received by it from said Central Valley Project to each parcel of land within the District regardless of size thereof, in proportion that District assessment on each parcel bears to the entire District assessment on all lands.

XXII

In dealing with irrigation Districts and other users of project water for irrigation, the Legislature of this State

may not, consistent with the California Constitution, and particularly Article IV thereof, delegate to Congress the power to legislate relative to the use of such water in contravention of State Law, nor authorize the Secretary of the Interior to enforce Federal law relative to the use of project water in contravention of State law.

Rights of, and Limitations upon, United States

XXIII

Subject to the rights of the State of California and the Water Project Authority of the State of California, as recited and found in paragraphs XIII and XVII of the Findings herein, the United States and the plaintiff District may lawfully enter into a contract for the delivery of water and repayment by said District to the United States of that portion of said project costs allocated to irrigation and assigned for repayment by the water users and found by the Secretary of the Interior to be within the ability of the [fol. 526] water users to repay. (The remainder of such costs allocated to irrigation to be repaid from power and other revenues.) Said contract may provide for an annual charge by the United States to the plaintiff District, including construction charges, and operation, maintenance and overhead charges on the basis of a sum not to exceed $3.50 per acre foot for class one water and a sum not to exceed $1.50 per acre foot for class two water, said sums having been determined to be the maximum charge within the ability of the water users to repay. Such contract must provide for a credit for the payments made by the plaintiff District upon such charges and provide that when such charges have been paid in full no further construction charges shall be collectible from the plaintiff District or landowners therein. The contract may not be the so-called "utility-type", limited-term contract contended for by the Secretary of Interior as hereinbefore found, particularly in paragraphs XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX, and LIII of the Findings herein.

XXIV

The United States may not, by virtue of its physical possession and ownership of the dams, reservoirs and main canals constituting the major works of said Central Valley Project, or by virtue of the possession of any other works necessary or useful in the delivery of stored waters of the Central Valley Project, withhold waste, or otherwise pre- [fol. 527] vent the application to beneficial use of Central Valley Project Waters, but is obligated to conform to the laws of the State of California relative to the control, appropriation, use and distribution of the waters of the Central Valley Project, and in that connection is required to permit such water to be put to beneficial use in accordance with the laws of the State of California and to recognize any and all vested rights. The United States is and shall be subject to the jurisdiction and direction of the State Engineer of the State of California as the executive officer of the Division of Water Resources of the Department of Public Works of the State of California as prescribed by the laws of said State in respect to acquisition of rights to the use of water by appropriation and respecting the use of such water, and that any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners and the landowners of said 19,500 acres so excluded from said District, and such water is and will be required to be delivered to such lands in perpetuity and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with State law, and further subject to the payment to the United States of reasonable and appropriate charges in repayment of its reasonable [fol. 528] and necessary construction, operation, maintenance and replacement costs.

XXV

The plaintiff District and the landowners therein are entitled, subject to the rights and interests of the State of California and its agencies, as recited and found in

paragraph XVI of the Findings herein, to a contract for the delivery of water by the United States to all lands within the plaintiff District, which contract shall recognize and provide for a permanent and appurtenant water right, subject only to continued beneficial use and a fixed maximum charge to be paid by the plaintiff District for the plaintiff's share of the construction costs of the major works of the Central Valley Project used or useful in the delivering of water to the plaintiff District, as such costs have been allocated to irrigation and in part assigned for repayment by the water users within their ability to repay the same, and in which contract a credit to the District upon such costs and a manner and method of accounting for such credit is provided for, and from which contract the features of the present contract herein sought to be validated which are herein found and concluded to be illegal and objectionable, including said acreage limitations, are eliminated.

XXVI

It must be presumed, and is found and concluded, to have been determined by the Secretary of the Interior, that to the extent the water may be available to the United States [fol. 529] for such purposes, the plaintiff District and its landowners subject to the discretionary powers of the State Engineer in issuing permits and licenses to appropriate waters as herein found and concluded, are entitled each year, under an appropriate contract, to not less than the quantities of Class 1 and Class 2 water as specified in Part A of the purported contract; and pursuant to the same presumption, finding and conclusion, that the charges specified in Part A of the purported contract contain a component for the return by plaintiff District of some part of its proportionate share of project construction costs, and that such charges, pursuant to an appropriate contract, are reasonable and within the ability of plaintiff District and its landowners and are adequate to repay to the United States, each year, an appropriate share of necessary construction, operation and maintenance costs.

XXVII

The following provisions of the said contract of May 14, 1951, are invalid and unenforceable because they conflict with State law, including in particular the State Constitution, Article XIV, Section 3, and the State Water Code, Sections 22077, 22250, 22259, 26700-26993.

A. Article 20 of the contract, purporting to condition the delivery of water upon the payment of void assessments.

B. Article 22 of the contract, purporting to impose a penalty unknown to California law with respect to land [fol. 530] which is in default in payments to the District although the latter is not in default in its payments to the United States.

C. Article 6 (c) of the contract, purporting to forbid the District from disposing of surplus water outside the District.

D. Article 9 (c) of the contract, purporting to reserve to the United States the right to all waste, seepage and return flow which escapes or is discharged beyond the District's boundaries.

E. Article 11 of the contract, purporting to forbid the District from delivering or furnishing any water required under the contract for other than agricultural purposes.

F. Article 26 of the contract, purporting to forbid the District from making any change in its boundaries, such as by the inclusion or exclusion of lands.

G. Articles 28, 29 and 30 of the contract, purporting to forbid the District from furnishing water made available under the contract to any lands in excess of 160 acres, held by any single beneficial owner, unless the owner complies with certain further requirements, including the sale of all land in excess of said 160 acres at prices not in excess of those approved by the United States Secretary of the Interior.

H. Articles 19 and 21 of the contract, purporting to hold all lands within the District subject to an *ad valorem* [fol. 531] tax to defray the charges imposed upon the Dis-

trict by the contract, notwithstanding the provisions of Articles 28, 29 and 30 of the contract, above mentioned, prohibiting the furnishing of water to land in excess of said 160 acres.

XXVIII

The contract of May 14, 1951, is further invalid under State law, including the State Constitution, Article XIV, Section 3, for the following reasons:

A. Neither the contract, nor the notice of election which preceded it, contains or contained any statement of the maximum amount of money to be payable to the United States for construction purposes and cost of water supply and acquisition of property, nor any provision for the crediting of the payments to be made under such contract to the cost of the project. In this respect the contract conflicts with the State Water Code, Section 23223.

B. The contract does not provide for or recognize a water right appurtenant to the lands within the District, but negates such right and instead contemplates and permits a continuing power in the Federal Government to furnish or withhold water at the end of the contract period upon such terms and conditions as the United States may then impose.

C. The contract further is contrary to State law in that it purports to deprive the lands within the District, and particularly the lands of the landowner Defendants and those similarly situated, of water rights recognized under [fol. 532] State law.

D. The election purportedly held on May 9, 1951, for the approval of said contract by the landowners of said District was invalid, illegal and of no force and effect.

XXIX

With respect to the provisions of said contract having to do with the so-called "distribution system", the contract and provisions thereof are invalid and void, among other things, for the reason that said contract is indefinite,

uncertain, ambiguous and lacking in mutuality and that the election notice calling the purported special election for the approval of said contract did not and does not conform to the requirements of the laws of the State of California for such notice, and in that said election was not legally and fairly conducted, but was illegally called, held and conducted for the reasons more particularly recited in the Findings herein.

XXX

The contract of May 14, 1951, is invalid and unenforceable for the further reason that numerous of its provisions, purporting to vest an uncontrolled discretion in the Secretary of the Interior, are so ambiguous, indefinite, uncertain and lacking in mutuality as to deny the basis of any contractual undertaking recognized by State law, and in particular the State Water Code, Section 23195.

XXXI

[fol. 533] Further with reference to Conclusion XXII, the Irrigation District Federal Cooperation Law, enacted by the State in 1917 and codified as a part of the State Water Code in 1943, does not exempt from the application of State law, as above declared and applied, the contract of May 14, 1951. Said law authorizes contracts between irrigation districts, including the Madera Irrigation District, and the United States, but the validity of any such contract must be measured by its consistency with generally-applicable State law. Said law does not purport to, and under Article IV of the California Constitution could not validly authorize contracts which are inconsistent with generally-applicable State law or delegate to the Federal Government the power to legislate in behalf of the State. The provisions of the contract above referred to, even if warranted under Federal legislation, are not authorized by State law, which controls.

XXXII

The provisions of said Irrigation District Federal Cooperation Law (State Water Code, Section 23197) authoriz-

to the District and its landowners the assurances required of the United States in its trustee relationship toward project beneficiaries with regard to the rights of the District and its landowners to a permanent supply of project water appurtenant to the land irrigated.

Invalidity Under State and Federal Law

XXXVII

That said contract with respect to the provisions thereof having to do with the delivery of water by the United States to the plaintiff District from the Central Valley [fol. 537] Project is invalid and void and is contrary to the Federal reclamation laws and to the laws of the State of California, among other things, in the particulars recited, found and set forth in the Findings herein, particular reference being here made to paragraphs VI, VII, VIII, IX, X, XVII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVII, XXX, XXXI, XXXII, XXXIII, XXXIX, XL, XLI, XLII, XLIII and XLIV.

Invalidity Under State and Federal Constitutions

XXXVIII

If the contract of May 14, 1951, could be held to be permitted or required under State and Federal law, or either, such law, for the reasons and in the particulars set forth in Conclusions XXVIII, A-H, inclusive, XXIX, A-D, inclusive, XXX, XXXI, XXXIV, XXXV, A-D, inclusive, XXXVI, XXXVII, and XXXVIII, above, would be and is unconstitutional, and would be and is also unconstitutional in its application to the Madera Irrigation District and to the answering defendant landowners and other landowners therein similarly situated and to all landowners of land in the District and in said 19,500 acres so excluded from said District, in denying them and each of them the equal protection of the laws and due process of law under Article I, Sections, 1, 13 and 14 of the California Constitution, and the Fifth Amendment and the Fourteenth Amendment, Sec-

tion 1, of the United States Constitution. This conclusion [fol. 538] independently follows under either of said Constitutions and under each such provision thereof.

XXXIX

If the contract of May 14, 1951, could be held to be permitted or required under Federal law, such law, for the reasons and in the particulars heretofore set forth in these Conclusions, would be and is unconstitutional, and would be and is also unconstitutional in its application to the Madera Irrigation District and to the landowner defendants and other landowners therein similarly situated, and to all landowners of land in the District and the said 19,500 acres excluded from said District, under the United States Constitution, and in particular the Tenth Amendment thereto.

Contract Inseparable

XL

Part A of the contract, including the provisions limiting the term thereof to 40 years, is inseparable from Part B thereof, providing for a major and permanent investment by the District in connection with the construction of a distribution system by the United States within the District for the distribution of project water to lands within the District, and the invalid provisions of the contract materially affect and are inseparable from other provisions of the contract.

XLI

A validation of the contract would render the status and [fol. 539] relationship of the parties toward each other, respecting water to be furnished by said project, confused and uncertain and would be prejudicial to the material rights and interests of the District and its landowners in and to the subject matter of the contract both during the term of the contract and upon its termination.

XLII

It is and would be unlawful and would cause irreparable harm and damage to plaintiff District and landowners therein for the plaintiff District, its board of directors, or the officers, agents, servants or employees of said District, or any of them, directly or in collaboration with others, to cause or permit the incurring of any obligation or liability upon the part of the plaintiff District or the landowners therein in connection with the foregoing contract or any part thereof, or to cause or permit any work of construction to be done in or upon said proposed distribution system, either under said contract or in such manner as to incur any liability upon the part of said District or the landowners therein, and any such acts or conduct hereinafter declared to be unlawful should be enjoined. The delivery of water by the United States to the plaintiff District at charges not to exceed $3.50 per acre foot for class one water and $1.50 per acre foot for class two water and the collection of funds therefor and payment for the costs thereof by the plaintiff District to the United States should not be enjoined.

[fol. 540] *Contract: Conclusion*

XLIII

For the foregoing reasons it is concluded that the contract of May 14, 1951, between the Madera Irrigation District and the United States of America, acting by the Bureau of Reclamation, is invalid and unenforceable and it should be so ordered, adjudged and decreed.

XLIV

The State Engineer is authorized and obligated to proceed diligently with the issuance of permits upon the applications now held by the United States for the benefit of the Central Valley Project, incorporating therein such terms and conditions as may be validly imposed within his discretion under the laws of the State of California. In the circumstances of this case, the failure of the United States to secure such permits has not, and may not be deemed to

have, impaired the vested rights acquired by the Madera Irrigation District and the landowners therein, including the answering landowner defendants, to the continued use of the project waters. Pending the issuance of permits, limited by such terms and conditions as the State Engineer may lawfully impose, said District and its landowners may continue of right vested in character to receive and put to beneficial use such project waters.

Injunction

XLV

[fol. 541] There should be entered a permanent injunction, enjoining the Madera Irrigation District, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Injunction by personal service or otherwise, from performing or taking any action to perform in behalf of the District the purported contract of May f4, 1951, and from failing or refusing to supply said landowner defendants appearing herein, with water for irrigation purposes, with respect to all of their land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination on the basis of the extend (sic) of their holdings of land within the District or any other basis; and affirmatively requiring said District to deliver water to said landowner defendants appearing herein without any such discrimination.

Let judgment be entered accordingly.

Dated: September 15th, 1953.

Benjamin C. Jones, Judge of the Superior Court, assigned.

I hereby certify that I have corrected and signed the foregoing proposed Findings of Fact and Conclusions of Law as of this date, viz: September 15, 1953.

Benjamin C. Jones, Judge of the Superior Court, Assigned.

[fol. 556] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MADERA

No. 8502

MADERA IRRIGATION DISTRICT, Plaintiff

v.

ALL PERSONS having or claiming to have any interest in the Contract entered into on the 14th day of May, 1951 between MADERA IRRIGATION DISTRICT and the UNITED STATES, providing for a water supply for the Madera Irrigation District from the Friant Dam, and the construction of a distribution system in said District to the United States, Defendants.

JUDGMENT—February 1, 1954

In the above entitled matter, appearances having been made and issues having been joined, and the cause having been duly tried and fully argued both orally and in writing, and the matter submitted to the Court, and the Court having directed that Findings of Fact and Conclusions of Law be drawn, and proposed Findings of Fact and Conclusions of Law having been prepared and served, and objections to said proposed Findings of Fact and Conclusions of Law having been set down for hearing, and the matter of settlement having been extensively argued, and the Court having settled said Findings of Fact and Conclusions of Law, and the same having heretofore in writing been duly [fol. 557] made, signed and filed herein,

Now, therefore, and upon, and in accordance with the law and the facts found in the case by the Court, and the conclusions reached by the Court, it is hereby Ordered, Adjudged and Decreed as follows:

I

That the contract between the plaintiff District and the United States attached to the complaint herein and

designated as "Exhibit A", dated the 14th day of May, 1951, and the election proceedings and the election held in connection therewith are illegal, void and without force or effect.

II

That non riparian and unappropriated water within the State of California is the property of the People of the State of California, but the right to the use of this water may be acquired by appropriation in the manner provided by the laws of the State of California. That the general welfare of this State requires the conservation of and putting to beneficial use the water resources of the State. That there is vested in the State the power to determine the use to which such unappropriated water may be applied, and permits and licenses for the appropriation of such water may be conditioned in keeping with the use to which it is to be applied. Under the Constitution of the United States and in particular the Tenth Amendment thereto, no federal enactment, rule or regulation may override or abolish the provisions or requirements of the Con- [fol. 558] stitution or the laws of the State of California in relation to the appropriation and use of waters within the State. In enacting the Federal Reclamation Act of 1902, Section 8 thereof, and in other legislation, the Congress of the United States has expressly recognized that the use of water in California is regulated by the laws of this State.

III

The United States is not the owner of the water supplied and to be supplied from the Central Valley Project to the lands within the plaintiff District. The interest of the United States in such water is limited in all respects by the law of this State to its function as the storer and the carrier of the water to be delivered from Friant Dam as a part of the Central Valley Project of California. (The word "law" being herein used to include, unless otherwise indicated, the Constitution, statutes, rules and regulations, and court and administrative decisions of this State.) The United States, to the extent that such water may be avail-

able, is obligated to deliver it to the lands that now are, and were, within the Madera Irrigation District in 1939, including the lands now within said District and 19,500 acres since excluded from said District, which are more particularly referred to and described in the Findings of Fact. This said obligation, among other sources, stems from the appropriative rights of said District and the landowners therein; from the appropriations made by the predecessors in interest of the Medera Irrigation District, [fol. 559] and the Madera Irrigation District, for said lands; and from the appropriations made by and through the Director of Finance of the State of California for all of said lands. The United States is obligated to acquire from the State of California through the office of State Engineer, permits and licenses for the use of water for said purposes and the use which the United States may make of such water is limited by the conditions which the said State Engineer may lawfully and reasonably impose under State law relating to such appropriations of said water. That this judgment is not intended to, and does not in anywise interfere with, restrict, or limit the lawful discretion of the State Engineer in acting upon all such applications and the issuance of permits and licenses pursuant thereto and in conditioning the same in the interest of the people of this State.

IV

The Madera Irrigation District is a lawfully organized and existing irrigation district organized and existing under the laws of the State of California with the capacity to contract with the Federal Government, but only to the extent permitted by State Law. That no such contract is valid to the extent that it is inconsistent with the law of this State or in conflict therewith.

V

That the notice of election published by the Madera Irrigation District for the election to be held on the 9th day [fol. 560] of May, 1951, was and is invalid, illegal and of no force and effect and that the election purportedly held on the 9th day of May, 1951, was improperly and illegally

called and held in that, among other things, said notice did not designate or set forth the maximum amount of money to be paid by said District to the United States and, in particular, did not set forth or specify or indicate the properties of the District which were to be conveyed by the District to the United States, which such properties included a portion, if not all, of that certain irrigation system within said District known as the "Emmert System". That no approval of the purported contract marked "Exhibit A" could have resulted, or did result, from this said purported election. That said election was not duly or regularly held as provided by law and was not noticed as required by law. That the publication by the Board of Directors of said District of false and misleading statements concerning the provisions of said contract as set out in the Findings of Fact constituted a fraud, and the true results of said election cannot be ascertained.

VI

That the water rights, real property and other properties and in particular the land, ground and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for construction of said Dam, together with rights of way and easements and water rights and filings upon waters of the San Joaquin [fol. 561] River, as more particularly set forth and described in that contract dated the 24th day of May, 1939, and in the Findings particularly found upon, were acquired and held by the Board of Directors of Madera Irrigation District in trust for all of the landowners within the boundaries of said District as said boundaries were then constituted; that said boundaries then contained all lands of the answering defendants herein.

VII

That any right, title or interest which the United States acquired under and by virtue of the said contract dated the 24th day of May, 1939, in and to said properties and water and water rights was and is held in trust by the United States for the benefit of all landowners within the

Madera Irrigation District and the owners of the 19,500 acres excluded from said District, including these answering defendants and their predecessors in interest.

VIII

That the contract dated the 24th day of May, 1939, between Madera Irrigation District and the United States is a valid and existing agreement, subject to the trusts and limitations herein referred to and adjudged to exist.

IX

That the right to receive a water supply pursuant to the contract dated the 24th day of May, 1939, was held by Madera Irrigation District as trustee for the use and benefit of all of the landowners within the District, together with [fol. 562] the landowners of the 19,500 acres of land since excluded from said District; that all of the landowners within the Madera Irrigation District, together with the landowners of the said 19,500 acres of land, and including all of these answering defendants were and are the beneficiaries of said trust. That the purported transfer by Madera Irrigation District to the United States, in the document dated the 14th day of May, 1951, and before this Court for validation, of the pro rata share of the right to receive a water supply pursuant to said 1939 contract for the 19,500 acres to the United States constitutes taking of property without due process of law and without just compensation.

X

Prior to the execution of the contract dated the 24th day of May, 1939, and at all times subsequent thereto, Madera Irrigation District held as trustee for all of the landowners within the boundaries of said District, including the landowners of the said 19,500 acres excluded from said District, a vested right to a permanent supply of water from the San Joaquin River and other sources, appurtenant to all of the lands then in said District, subject to and in accordance with the laws of the State of California, by reason of applications to appropriate unappropriated water

from said river and other sources duly filed by the said District or its predecessors, with the State Engineer, Division of Water Resources of the State of California; that the purported substitution by the contract marked [fol. 563] Exhibit "A", dated the 14th day of May, 1951, now before the Court for validation, of a temporary right to receive project water from the United States in accordance with the terms of said contract marked Exhibit "A", in lieu of said appropriative rights to a permanent water supply, initiated by said District, in accordance with State law, constitutes a deprivation of property to the landowners within Madera Irrigation District and the landowners of the said 19,500 acres of land excluded from Madera Irrigation District to the use of said waters by reason of the limitations imposed upon them by Articles 28, 29 and 30 of the contract without due process of law and without just compensation therefor and is a breach of the recited trusts.

XI

That it was agreed between the United States and plaintiff Madera Irrigation District, by the contract dated the 24th day of May, 1939, that the owners of all of the lands within the boundaries of the plaintiff Madera Irrigation District, including the 19,500 acres excluded from the boundaries of the District were and are permanently entitled to delivery by the United States of the quantities of water set forth in this contract; that said contract right is binding upon the United States subject only to the assignment of a portion of said quantity of water to the Chowchilla Water District pursuant to the agreement dated the 24th day of August, 1949, accepted and approved by the Secretary of Interior of the United States on the 16th [fol. 564] day of September, 1949, that the owners of said lands were, and are, entitled to the delivery of such quantities of water without any of the restrictions or conditions set forth in Articles 28, 29 and 30 of the alleged contract before the Court; that said contract right to receive said water is a continuing right to a permanent delivery of water from the project to all lands in said District, appurtenant to the lands irrigated, subject to and in ac-

cordance with the laws of the State of California; that the United States is entitled to payment therefor at the rate of not to exceed $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, which waters are defined in said contract dated the 24th day of May, 1939; that said Madera Irrigation District and the landowners, and each of them, are entitled to a credit to the extent of such payments by the United States toward the discharge of the District's share of the construction costs of the Central Valley Project as more particularly hereinbefore and hereinafter set forth.

XII

In order for the United States to carry out the purposes of the Central Valley Project, particularly the delivery of water therefrom to project beneficiaries, including plaintiff District and its landowners, it became desirable and expedient that the State of California assign in trust to the United States for the uses and purposes of the Central Valley Project applications to appropriate unappropriated [fol. 565] water and the water rights referred to in Findings XII, XVII, XXV, XXVI, and XXVII and also to acquire other applications and the appropriative and other rights to water referred to in Findings VI and VII and to perfect all such applications by securing permits pursuant to the laws of the State of California, for the use of all such water by said project beneficiaries, including the plaintiff District and the landowners therein and the landowners of the 19,500 acres now excluded from the District. All rights to the use of water heretofore acquired by the United States for the purposes of the Central Valley Project, as well as all rights to the use of water in process of acquisition and to be acquired for such purposes, are held by it in trust for the beneficiaries of said project, including the plaintiff District and its landowners, and the landowners of the 19,500 acres more recently excluded from the District, all of whom have a present and vested right to the faithful fulfillment and execution of said trust. That for the last several years, water has been delivered through the Central Valley Project by the United States Bureau of Reclamation to the plaintiff District and its landowners for the ir-

rigation of lands within the District; and subject to the laws of the State of California and the discretionary powers of the State Engineer in issuing permits and licenses, said District and its landowners, and the landowners in said 19,500 acres excluded from said District, have acquired vested and existing property rights to a permanent supply of project water, which said rights are [fol. 566] now vested in said landowners as appurtenances to their land, subject only to those reasonable conditions imposed by State Law, and to a defeasance upon failure of use; that by the transfer to the United States by the District of the rights of the District to appropriate water pursuant to its applications which had theretofore been filed with the State Engineer of the State of California, the owners of land within the 19,500 acres excluded from the District, and the District on behalf of its landowners, have acquired and now possess additional vested property rights to a permanent supply of project water in addition to those originating in the filings made by the Director of Finance of the State of California.

XIII

Any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are held in trust and dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners, and the landowners of the 19,500 acres excluded from said District; and such water is required to be delivered to such lands for use thereon and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with the law of this State, and under the burden of repayment to the United States of the reasonable charges for storing and transporting such appropriated water.

[fol. 567]

XIV

Permits issued to the United States pursuant to the applications to appropriate unappropriated waters for the Central Valley Project vest in the United States rights as trustee only, with the beneficial title to such waters in the

landowners within the service area of the project. The owners of any and all lands within the Madera Irrigation District, and of the 19,500 acres excluded, are entitled to equal rights to receive water from such project without discrimination and to apply such water upon their lands, subject only to lawfully imposed conditions in accordance with State law, and the payment of charges sufficient to return to the United States its due proportion of the reimbursable and returnable costs of the project.

XV

The Secretary of Interior in constructing, operating and maintaining the Central Valley Project has at all times been, and now is, under mandate from the Congress of the United States to proceed in accordance with the laws of the State of California in acquiring rights to the use of water for purposes of said project and to hold and retain such applications, rights and interests not for its own use and benefit but for the use and benefit of the beneficiaries of the Central Valley Project, including the plaintiff District and the landowners therein, and the landowners of said 19,500 acres excluded from said District. The right, [fol. 568] title and interest, and ownership of all rights, to the use of water acquired or to be acquired by the United States for the purposes of said project, immediately upon the acquisition of such rights, gave, and do give, rise to a resulting trust, with the State of California, as the trustor, the United States, acting through the Secretary of the Interior and the United States Bureau of Reclamation, as trustee, and the landowners contemplated to be served with water by means of the project as the beneficiaries of such trust; and the United States as trustee for all project beneficiaries has the duty and obligation, which it has failed yet to perform, to perfect its applications to appropriate water in accordance with the law of this State.

XVI

The operation of the Central Valley Project as authorized, done and maintained by the United States is a Federal assistance program, and the Secretary of the

Interior in expending Federal funds for the construction, operation and maintenance of the project, has so done, and is doing so, subject to ultimate appropriate repayment by the State, or local Districts and agencies thereof, of the reimbursable costs of the project in accordance with the Federal Reclamation laws.

XVII

The United States has the right, duty and obligation to recover, in accordance with the Federal Reclamation laws, that portion of the reimbursable project construction costs allocated to irrigation and assigned for repayment by the [fol. 569] water users; and the District and all landowners therein, including the defendant landowners herein appearing, are obligated to pay for a proportionate share of the cost of delivery of project water, and a proportionate share of the project construction costs, and in the payments made for such purposes are entitled to credit for that portion of payments which should appropriately be applied to the repayment of project construction costs.

XVIII

The District and its landowners upon the repayment of a proportionate share of the project construction costs are entitled, subject to compliance with State law, including such reasonable conditions as may be imposed by the State Engineer in permits and licenses to use the water, to the continued delivery of project water by the United States as a right appurtenant to all of the district lands at such rates only as may be required to cover the District's proportionate share of the costs of operation and maintenance.

XIX

The directors of the District in the management of the affairs thereof, and in the delivery of water made available by the project to the landowners therein, are governed solely by the laws of the State of California relating to irrigation districts.

XX

The District is an organization created and governed by [fol. 570] and for the electors thereof and bears a trust relationship to the landowners therein and in carrying out such trust is obligated by the law of this State relating to irrigation districts, to deliver the water received by it from said Central Valley Project to each parcel of land within the District regardless of the size thereof, in the proportion that District assessment on each parcel bears to the entire District assessment on all lands within the District.

XXI

In dealing with irrigation districts and other users of project water for irrigation, the Legislature of this State may not, consistent with the California Constitution, and particularly Article IV thereof, delegate to Congress the power to legislate relative to the use of such water in contravention of the law of California, nor authorize the Secretary of the Interior to enforce regulations of the Department of Interior relative to the use of project water in contravention of the laws of this State.

XXII

Subject to the rights of the State of California and the Water Project Authority of the State of California, as recited and found in paragraphs XIII and XVII of the Findings herein, the United States and the plaintiff District may lawfully enter into a contract for the delivery of water and repayment by the District to the United States of that portion of said project costs properly allocated to [fol. 571] irrigation and assigned for repayment by the water users, and found by the Secretary of the Interior to be within the ability of the water users to repay, and providing for an annual charge by the United States to the plaintiff District, including construction charges, and operation, maintenance and overhead charges, allowing credit for the payments made by the District upon such charges and providing that when such charges have been paid in full no further construction charges shall be collectible from the plaintiff District or the landowners therein.

XXIII

The United States may not, by virtue of its physical possession of the dams, reservoirs and main canals constituting the major works of said Central Valley Project, or by virtue of the possession of any other works necessary or useful in the delivery of stored waters of the Central Valley Project, withhold, waste, or otherwise prevent the application to beneficial use of Central Valley Project waters, but is obligated to conform to the laws of the State of California relative to the control, appropriation, use and distribution of the waters of the Central Valley Project, and in that connection is required to permit such water to be put to beneficial use in accordance with the laws of this State and to recognize any and all vested rights therein. In delivering Central Valley Project water, the United States is subject to the authority of the State Engineer of the State of California as the executive officer [fol. 572] of the Division of Water Resources of the Department of Public Works of the State of California as prescribed by the laws of this State in respect to the acquisition of rights to the use of water by appropriation and respecting the use of such water. Any and all rights to the use of water acquired or to be acquired, by the United States for purposes of the Central Valley Project are dedicated to carrying out the purposes and objects of the project, including the delivery of water to plaintiff District and its landowners and the landowners of said 19,500 acres so excluded from said District. The water delivered, and required to be delivered, to such lands is under a right appurtenant to the lands upon which it is used, subject only to conditions lawfully imposed in accordance with State law, and to defeasance upon lack of use; but subject further, however, to the payment to the United States of the reasonable and appropriate charges in repayment of its reasonable and necessary construction, operation, maintenance and replacement costs.

XXIV

The plaintiff District and the landowners therein are entitled, subject to the rights and interests of the State

of California and its agencies, including the exercise of the lawful discretion of the State Engineer, to a contract for the delivery of water by the United States to all lands within the plaintiff District, which contract shall recognize and provide for a permanent and appurtenant water right, [fol. 573] conditioned, among such other reasonable requirements as may be imposed, upon continued beneficial use, and additionally subject to a fixed maximum charge to be paid by the plaintiff District for the plaintiff's share of the construction costs of the major works of the Central Valley Project used or useful in the delivering of water to the plaintiff. (sic) District, as such costs have been allocated to irrigation and in part assigned for repayment by the water users within their ability to repay the same, and in which contract a credit to the District upon such costs and a manner and method of accounting for such credit is provided for.

XXV

It is adjudged to have been determined by the Secretary of the Interior, that to the extent that water may be available to the United States for such purposes, the plaintiff District and its landowners subject to the discretionary powers of the State Engineer in issuing permits and licenses to appropriate waters as herein found and concluded, are entitled each year, under an appropriate contract, to not less than the quantities of Class 1 and Class 2 water as specified in Part A of the purported contract; and that the charges specified in Part A of the purported contract contain a component for the return by plaintiff District of some part of its proportionate share of project construction costs; and that such charges, pursuant to an appropriate contract, are reasonable and within the ability of plaintiff District and its landowners to pay and are ade- [fol. 574] quate to repay to the United States, each year, an appropriate share of the necessary construction, operation and maintenance costs.

XXVI

The following provisions of said contract of May 14, 1951, are invalid, void and without force or effect:

A. Article 20 of the contract, purporting to condition the delivery of water upon the payment of void assessments.

B. Article 22 of the contract, purporting to impose a a (sic) penalty unknown to California law with respect to land which is in default in payments to the District although the District is not in default in its payments to the United States.

C. Article 6(c) of the contract, purporting to forbid the District from disposing of surplus water outside the District.

D. Article 9(c) of the contract, purporting to reserve to the United States the right to all waste, seepage and return flow which escapes or is discharged beyond the District's boundaries.

E. Article 11 of the contract, purporting to forbid the District from delivering or furnishing any water required under the contract for other than agricultural purposes.

F. Article 26 of the contract, purporting to forbid the District from making any change in its boundaries, such as by the inclusion or exclusion of lands.

G. Articles 28, 29 and 30 of the contract, purporting to forbid the District from furnishing water made available [fol. 575] under the contract to any lands in excess of 160 acres, held by any single beneficial owner, unless the owner complies with certain further requirements, including the sale of all land in excess of said 160 acres at prices not in excess of those approved by the United States Secretary of the Interior.

H. Articles 19 and 21 of the contract, purporting to hold all lands within the District subject to an *ad valorem* tax to defray the charges imposed upon the District by the contract, notwithstanding the provisions of Articles 28, 29 and 30 of the contract, above mentioned, prohibiting the furnishing of water to land in excess of said 160 acres.

XXVII

The contract of May 14, 1951, is invalid under State law, including the State Constitution, Article XIV, Section 3, for the following reasons:

A. Neither the contract, nor the notice of election which preceded it, contains or contained any statement of the maximum amount of money to be payable to the United States for construction purposes and cost of water supply and acquisition of property; nor any provision for the crediting of the payments to be made under such contract to the cost of the project.

B. The contract does not provide for or recognize a water right appurtenant to the lands within the District; the contract contemplates and permits a continuing power in the Federal Government to furnish or withhold water at the end of the contract period upon such terms and condi- [fol. 576] tions as the United States may then impose.

C. The contract is contrary to State law in that it purports to deprive the lands within the District, and particularly the lands of the landowner Defendants and those similarly situated, of present existing and vested water rights existing under and by virtue of the laws and the Constitution of this State.

XXVIII

The contract of May 14, 1951, is invalid and unenforceable because the numerous provisions, purporting to vest an uncontrolled discretion in the Secretary of the Interior, are so ambiguous, indefinite, uncertain and lacking in mutuality as to obviate any basis of contractual undertaking recognized by the laws of California.

XXIX

The provisions of said Irrigation District Federal Cooperation Law (State Water Code, Section 23197) authorizing the inclusion of a contractual provision for the delivery and distribution of water under Acts of Congress and the rules and regulations established thereunder, au-

thorizes such delivery and distribution only under such acts, rules and regulations as are consistent with the laws of this State. The contract imposes conditions on the delivery and distribution of water which are inconsistent with State Law, the Constitution of the State of California, the Constitution of the United States, and the Reclamation Act of 1902.

[fol. 577]

XXX

The contract of May 14, 1951, is invalid in that it provides that the Secretary of the Interior, pursuant to rule and regulation, may in relation thereto apply numerous unrepealed provisions of the Act of Congress of June 17, 1902, and acts amendatory thereof or supplementary thereto, all collectively styled the Federal reclamation laws, and generally referred to in the contract as the basis thereof; that the application to the contract of many of such provisions would adversely and materially affect the contract and the rights of the District and the landowners thereunder, in violation of the laws of the State of California.

XXXI

The contract is in violation of Federal law in the following particulars:

A. Part A of the contract purports to be a utility contract for the sale of project water to persons in whom the right to the use of such water is already vested.

B. The contract does not state the total or any amount to be repaid by the District and its landowners of that portion of the reimbursable costs of the profit allocated to irrigation and assigned for repayment by the water users; and fails to provide credit for any part of the annual rates for water to the repayment of the District's obligation for project construction costs.

C. The contract destroys the right of the District and [fol. 578] its landowners to acquire the right to a permanent delivery of project water appurtenant to the land irrigated, the intendments of the contract being that at the end of 40 years no project water will be delivered to

the District except in the discretion of the Secretary of the Interior.

D. The provisions of Sections 28, 29 and 30 of the contract relating to excess lands are in violation of Section 8 of the Reclamation Act of June 17, 1902, in that such limitations on the acreage to which water may be delivered is in violation of the laws of the State of California.

XXXII

The contract by its terms and provisions is unenforceable for the reason that it is indefinite, uncertain, misleading and lacking in mutuality regarding the relationship of the parties toward each other with respect to project water and the relative rights and duties of the respective parties in connection therewith, and for the reason that it denies to the District and its landowners the assurances required of the United States in its trustee relationship toward project beneficiaries with regard to the rights of the District and its landowners to a permanent supply of project water appurtenant to the land irrigated.

XXXIII

Part A of the contract, including the provisions limiting the term thereof to 40 years, is inseparable from Part B thereof, providing for a major and permanent investment [fol. 579] by the District in connection with the construction of a distribution system by the United States within the District for the distribution of project water to lands within the District, and the invalid provisions of the contract materially affect and are inseparable from other provisions of the contract.

XXXIV

In the circumstances of this case, the failure of the United States to secure permits from the State for the use of project water has not, and may not be deemed to have, impaired the vested rights acquired by the Madera Irrigation District and the landowners therein, including the answering landowner defendants, to the continued use of

the project waters. Pending the issuance of proper permits, the said District and its landowners may continue to receive and put to beneficial use project waters in the exercise of their vested rights therein.

XXXV

That plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be and they are hereby permanently enjoined from performing or taking any action to perform in behalf of said District the said contract or any part thereof and they are further enjoined from causing or permitting any work of construction to be done in or upon said [fol. 580] proposed distribution system, under said contract, in such manner as to incur any liability upon the part of said District or the landowners therein.

XXXVI

That the plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be and they are hereby permanently enjoined from failing or refusing to supply the landowner defendants with water for irrigation purposes, with respect to all of their land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination by reason of the extent of their holdings of land, or on any other basis inconsistent with the findings of fact and this judgment made, signed, filed and entered herein.

XXXVII

The delivery of water by United States to the plaintiff District at charges not to exceed $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, and the collection of funds therefor, and the payment for

the costs thereof by plaintiff District to the United States is not enjoined.

XXXVIII

Defendants appearing herein are entitled to their costs of suit.

[fol. 581] Dated: February 1st, 1954.

Benjamin C. Jones, Judge of the Superior Court, Assigned.

[File endorsement omitted]

[fol. 614] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Sac. No. 6489

THE MADERA IRRIGATION DISTRICT, Plaintiff and Appellant,

vs.

ALL PARTIES and PERSONS, ETC., Respondents,

THE STATE OF CALIFORNIA, ET AL., Defendant and Appellant.

NOTICE OF APPEAL BY THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA TO THE SUPREME COURT OF THE UNITED STATES—March 11, 1957

I

Notice is hereby given that the Madera Irrigation District and the State of California, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California affirming the judgment of the Superior Court in and for the County of Madera, State of California, which declared invalid that certain contract between the Madera Irrigation District and the United States dated May 14, 1951. The opinion of the Supreme

Court of the State of California was filed on January 24, 1957; rehearing was denied by that Court on February 19, 1957.

This appeal is taken pursuant to 28 U.S.C.A. section [fol. 615] 1257(1).

II

The Clerk of the Supreme Court of the State of California will please prepare a transcript of the record in this proceeding for transmission to the Clerk of the Supreme Court of the United States. He shall include in said transcript the following:

1. The record consisting of Clerks Trans.—2 vols., Reporters Trans.—2 vols., Supp. Reporters—1 vol., heretofore filed with the Supreme Court of the State of California on the appeal to said Court.
2. The opinion by the California Supreme Court in this proceeding and in the case of *Ivanhoe Irrigation District* v. *All Parties*, L.A. No. 23043, both filed January 24, 1957.
3. The petitions to the California Supreme Court by the Madera Irrigation District and the State of California for a rehearing, the answers thereto, all the *amicus curiae* briefs filed in support thereof or opposition thereto, and the answers to such *amicus curiae* briefs.
4. The order of the California Supreme Court of February 19, 1957, denying a rehearing.
5. This Notice of Appeal.

III

The questions presented by this appeal all relate to the validity of the previously identified contract between the [fol. 616] United States and the Madera Irrigation District, an agency of the State of California, providing for delivery of a water supply to the District from the federal Central Valley Project, and the expenditure and repay-

ment of funds for construction of a distribution system by the United States to distribute this water supply within the District.

These questions are as follows:

1. Section 46 of the *Omnibus Adjustment Act of 1926* (44 Stat. 649 (1926), 43 U.S.C. section 423e (1952)) precludes delivery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

   (a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

   (b) Is this section valid or does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

   (c) The California *Irrigation District Federal Cooperation Law* (Calif. Water Code sections 23175 *et seq.*) provides for the delivery and distribu-[fol. 617] tion of water acquired under any contract with the United States "under the relevant acts of Congress" (*id.* section 23197(a)), and "in accordance with the applicable acts of Congress" (*id.* section 23200). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in the California *Irrigation District Federal Cooperation Law?*

   (d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed is [or is] not an unlimited title in the United States?"

   (e) Does section 8 of the *Reclamation Act of 1902* (32 Stats. 390 (1902), 43 U.S.C. sections 372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contract involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of [fol. 618] California have jurisdiction to determine:

   a. What water rights or title the United States has acquired?

   b. What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in paragraph 8 are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* deprive the owners thereof of those rights?

8. Does federal law provide that upon repayment the District must be granted title to "works for the storage and distribution of water to and by the district" [fol. 619] . . . "not dependent on a future and necessarily discretionary act of Congress?"

9. Does federal law require that the contract specify an obligation for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years?

10. Does section 8 of the *Reclamation Act of 1902* submit the United States to the provisions of State law regulating public utilities where Congress by section 9(e) of the *Reclamation Project Act of 1939* has provided a system of regulation for federal projects which may be inconsistent with the State system?

11. Section 9(e) of the *Reclamation Project Act of 1939* (53 Stat. 1196 (1939, 43 U.S.C. section 485h(e) 1952)) authorizes the Secretary of the Interior to enter into contracts to furnish water for irrigation purposes from federal reclamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

[fol. 620] (b) If it does, does it impose upon landowners a burden "under which they may suffer the loss of water rights at the discretion of the United States" so that it is "contrary to well established constitutional principles and protections"?

Dated: March 11, 1957.

Edmund G. Brown, Attorney General of the State of California, B. Abbott Goldberg, Deputy Attorney General, Adolphus Moskovitz, Deputy Attorney General, 600 State Building, San Francisco 2, California, Attorneys for Defendant and Appellant, The State of California, By Adolphus Moskovitz.

David E. Peckinpah, Denver C. Peckinpah, 1229 N Street, Fresno, California, Attorneys for Plaintiff and Appellant, The Madera Irrigation District.

[fol. 621] Affidavit of service (omitted in printing).

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8497

PHILLIP ALBONICO and JANE E. ALBONICO, his wife, Petitioners,

v.

MADERA IRRIGATION DISTRICT, A Corporation, and JOHN M. ALLEN, C. A. RIDGEWAY, ALLEN T. ROBERTS, DEE V. ROMANS, JOHN A. FRANCHI, Directors of the Madera Irrigation District, Respondents.

PETITION FOR WRIT OF MANDATE—Filed May 14, 1951

Your petitioners above named respectfully apply for a Writ of Mandate by this their verified petition and in this behalf set forth the following facts and causes for the issuance of the Writ, namely:

I

That the Madera Irrigation District is an irrigation district organized and existing under and by virtue of the laws of the State of California pursuant to the California Irrigation District Act and acts amendatory thereof or supplementary thereto known as the Irrigation District Law, (Calif. Water Code, Div. 11) with its principal place of business at Madera, California.

II

That John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans, John A. Franchi are the duly elected, [fol. 2] constituted and acting Board of Directors of the Madera Irrigation District.

III

That your petitioners are the owners in fee of the tract of land consisting of all of those pieces or parcels of land

lying in the County of Madera, State of California and more particularly described as follows, to wit:

All portions of the S½ of Lots 1 and 2 in the NW¼ and the N½ of Lots 1 and 2 in the SW¼, lying Southwest of the A.T. & S.F. R.R. R/w, in Section 18, T. 12 S, R. 19 E, containing 100 acres, more or less.

S½ of NE¼ of Section 13, T. 12 S., R. 18 E., M.D.B. & M., containing 80 acres, more or less.

W½ of SE¼ of Section 34, T. 11 S., R. 18 E., M.D.B. & M., containing 80 acres, more or less.

W½ of the SE¼ and the SE¼ of the SE¼ of Section 3, T. 12., S., R. 18 E., M.D.B. & M., containing 120 acres, more or less.

S½ of the SW¼ of Section 3, T. 12 S., R. 18 E. and the E½ of the SE¼ of the SE¼ of Section 4, T. 12 S., R. 18 E., M.D.B. & M., containing 100 acres, more or less.

NE¼ of Section 10, T. 12 S., R. 18 E. and the NW¼ of the NW¼ and the W½ of the SW¼ of the NW¼ of Section 11, T. 12 S., R. 18 E., M.D.B. & M., containing 220 acres, more or less.

N½ of the SW¼ and the SE¼ of the SW¼ of Section 11, T. 12 S., R. 18 E., M.D.B. & M., containing 120 acres, more or less.

NE¼ of Section 14, T. 12 S., R. 18 E., M.D.B. & M., containing 160 acres, more or less.

All that portion of the W½ of Section 14, T. 12 S., Range 18 E. M.D.B. & M., lying east of the S.P.R.R. R/W, containing 250 acres, more or less.

The N 30 acres of the NW¼ of the NW¼ of Section 13, T. 12 S., R. 18 E., M.D.B. & M., less 0.49 acres deeded to state.

[fol. 3] IV

That all of said lands above described lie within the boundaries of the Madera Irrigation District.

V

That on or about the 16th day of February, 1951, your petitioners, in the manner and form required by law, filed with the respondents their petition for the exclusion of said lands from the said Madera Irrigation District. That the 5th day of April, 1951, at the offices of the Madera Irrigation District in the City of Madera, County of Madera, State of California, was set as the time and place for the hearing of said petition and notice of this hearing was given in the manner required by law.

VI

The said petition came on regularly for hearing on the 5th day of April, 1951. The petitioner, Phillip Albonico, was present and represented by his counsel; the respondent Directors of the Madera Irrigation District were present together with their legal counsel and other representatives of the Madera Irrigation District; a record of the proceedings on the petition was made by a duly qualified reporter.

VII

That upon the hearing of the said petition, as aforesaid, evidence was introduced on behalf of the petitioners showing that, except as to 320 acres thereof the said lands of the petitioners sought to be excluded would not be benefited by the operations of the Madera Irrigation District. [fol. 4] Reference is hereby made to the record of said hearing.

VIII

That upon the hearing of the said petition, as aforesaid, no evidence was introduced in opposition to the petition either by the respondents or by any objectors to the petition; that no evidence was introduced at said hearing that the lands of the petitioners, except as to 320 acres thereof, would be benefited by the operations of the Madera Irrigation District.

IX

Thereafter at the Adjourned Regular Meeting of the Board of Directors of the Madera Irrigation District of Thursday, April 12, 1951, the Madera Irrigation District by Resolution #1885 of its Board of Directors entered its findings of fact that:

(1) The lands of the petitioners would be benefited by the operations of the Madera Irrigation District, and

(2) That it was not for the best interest of said irrigation district that said land be excluded; and entered its order that the said petition for exclusion be denied.

X

That except as to 320 acres thereof, there was no evidence before the Directors of the Madera Irrigation District to support the finding of fact that the lands of the petitioners would be benefited by the operations of the Madera Irrigation District.

XI

[fol. 5] That at the time of the hearing of said petition as heretofore set forth, and the making of the order that the said petition for exclusion be denied, the Respondent Madera Irrigation District had completed its negotiations with the United States of America for the terms of a contract for the purchase of irrigation water and the construction of a distribution system; that the Respondent Madera Irrigation District had presented the terms of said contract to, and obtained the approval of, the California Districts Securities Commission; that the Respondent Madera Irrigation District had thereafter given notice for the calling of an election in the Madera Irrigation District for the purpose of authorizing the Directors of the Madera Irrigation District to execute said contract with the United States of America; that the entire operations of said District in relation to the said lands of your petitioners will be pursuant to and in conformity with said contract; that at all of said times, said contract, by its terms and by the laws of the United States of America, prohibits the

delivery of water by the Madera Irrigation District to any one person owning more than 160 acres of land, or, as in the case of these petitioners, where the petitioners are married and the property is community property, prohibits the delivery of water by the Madera Irrigation District to more than 320 acres of the land of the petitioners; that as heretofore alleged, these petitioners are the owners of 1,259.51 acres of land, more or less, in the Madera Irrigation District; that subsequent thereto, to wit, on the [fol. 6] 9th day of May, 1951, an election was held in the Madera Irrigation District; that the petitioners are informed and ~~believe~~, and upon such information and belief allege, that at said election the Directors of the Madera Irrigation District were authorized to execute the said proposed contract, but that the result of said election will not be legally determined until the returns of said election are canvassed at 10:00 A.M., on the 14th day of May, 1951.

XII

That except as to 320 acres thereof, the lands of the petitioners described in this petition will not be benefited by the operations of the Madera Irrigation District.

XIII

That your petitioners have no plain, speedy, or adequate remedy in the course of the law in that there is no provision under the laws of the State of California for an appeal by the petitioners from the action of the respondents in denying said petition for exclusion.

XIV

That the said respondent Madera Irrigation District is about to enter into said contract with the United States of America for the purchase of irrigation water and the construction of a distribution system.

Wherefore, your petitioners pray:

1. That an Alternative Writ of Mandate issue out of and under the ~~seal~~ of your Honorable Court, directed to [fol. 7] the respondents above named, commanding said

respondents to vacate and set aside their resolution denying the exclusion of the aforesaid lands and, further, commanding them to approve the petition for the exclusion of the aforesaid lands except as to 320 acres thereof, or to show cause before this Court at a specified time and place why said respondents have not done so;

2. That upon said hearing to show cause a Writ issue out of and under the seal of your Honorable Court, directed to the respondents above named, commanding said respondents to vacate and set aside their resolution denying the exclusion of the aforesaid lands and further commanding them to approve the petition for the exclusion of the aforesaid lands except as to 320 acres thereof;

3. That the respondents be directed to produce at that time the record of the hearing before the Directors of the Madera Irrigation District on the petition for exclusion;

4. That the respondents be directed to produce at that time a copy of the proposed contract with the United States of America for the purchase of irrigation water and the construction of a distribution system;

5. And for such other and further relief to which petitioners may be entitled.

Phillip Albonico, One of Petitioners.
Green, Green, Plumley & Kuney, By Kenneth A. Kuney.

[fol. 11] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MADERA

No. 8497

[Title omitted]

ALTERNATIVE WRIT OF MANDATE—May 14, 1951

The People of the State of California Send Greetings to the Madera Irrigation District, and John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans, John A. Franchi, Directors of the Madera Irrigation District:

Whereas, it appears by the verified petition of Phillip Albonico and Jane E. Albonico, his wife, the parties beneficially interested herein that you, the said Madera Irrigation District and John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans, John A. Franchi, the Directors of the Madera Irrigation District, refuse to exclude the lands of the petitioners from the Madera Irrigation District, which lands are set out and more particularly described in the petition herein, and it appearing from said petition that except as to 320 acres thereof the petitioners herein are entitled to have said lands excluded from the Madera Irrigation District, and it further appearing that an Alternative Writ of Mandate should issue herein and [fol. 12] that the petitioners have no plain, speedy, or adequate remedy in the course of the law;

Therefore, we do command you that immediately upon the receipt of this Writ you do vacate and set aside your resolution denying the petition for the exclusion of the said lands and further that you grant and approve the petition for the exclusion of the said lands except as to 320 acres thereof, or that you show cause before this Court at the courtroom thereof on the 23rd day of May, 1951, at 10:00 o'clock A.M. of said day why you have not done so, and produce at that time the record of the hearing on the petition for exclusion.

Let the within Writ issue.

Dated this 14th day of May, 1951.

Edward L. Kellas, Judge of the Superior Court.

Attest my hand and seal of said Court this 14th day of May, 1951.

Erma E. Chouvront, Clerk, By H. H. Dwyer, Deputy Clerk.

(Seal)

[fol. 18] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8497

[Title omitted]

ANSWER TO PETITION—Filed May 25, 1951

Come now respondents above named and, answering the petition on file herein, admit, deny and allege as follows, to wit:

I

Deny generally and specifically, each and every allegation contained in Paragraph VII of said petition.

II

Deny generally and specifically, each and every allegation contained in Paragraph VIII of said petition, except that respondents admit that no evidence was introduced at the hearing by any objectors to the petition.

III

Deny generally and specifically, each and every allegation contained in Paragraph X of said petition.

IV

Answering the allegations contained in Paragraph XI of [fol. 19] said petition, respondents deny that the contract mentioned in said paragraph, by its terms or by the laws of the United States of America, or otherwise, or at all, prohibits the delivery of water by the Madera Irrigation District to any one person owning more than 160 acres of land, or prohibits the delivery of water by the Madera Irrigation District to more than three hundred twenty acres of the lands of petitioners.

V

Deny generally and specifically, each and every allegation contained in Paragraph XII of said petition.

Wherefore, respondents pray that said petition be denied and that respondents have judgment for their costs and disbursements.

David E. Peckinpah, Denver C. Peckinpah, Harold M. Child, L. N. Barber, By L. N. Barber, Attorneys for Respondents.

[fol. 22] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MADERA

No. 8497

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
January 28, 1952

This cause came regularly on for hearing on the 8th day of June, 1951, pursuant to an alternative writ of mandate heretofore granted petitioners herein, Green, Green, Plumley & Kuney, by Denslow Green and Kenneth A. Kuney, appearing as counsel for the petitioners, and David E. Peckinpah, Esq., and L. N. Barber, Esq., appearing as counsel for the respondents, whereupon evidence was introduced on behalf of the petitioners and the matter ordered submitted upon briefs, and the briefs having been filed by counsel, and the cause thereupon submitted to the Court for its consideration and decision, and the Court being advised in the premises, hereby makes and files its Findings of Fact and Conclusions of Law constituting its decision in said action, as follows, to wit:

FINDINGS OF FACT

I

[fol. 23] That all of the allegations contained in paragraphs I, II, III, IV, V, and VI, of petitioners' Petition for Writ of Mandate, on file herein, are true.

II

That it is true that upon the hearing of said Petition as aforesaid, evidence was introduced on behalf of petitioners showing that if Sections 28, 29, and 30, of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) are valid and in force and effect, that, except as to 320 acres thereof, the said lands of the petitioners sought to be excluded would not be benefited by the operations of the Madera Irrigation District.

III

That it is true that upon the hearing of the said Petition, as aforesaid, no evidence was introduced in opposition to the Petition by any objectors to the Petition; that it is true that if Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein), are valid and in force and effect, that no evidence was introduced at said hearing that the lands of petitioners, except as to 320 acres thereof, would be benefited by the operations of the Madera Irrigation District.

IV

That the allegations contained in paragraph IX of peti- [fol. 24] tioners' Petition for Writ of Mandate, on file herein, are true.

V

That it is true that if Sections 28, 29, and 30, of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) are valid and in force and effect, that, except as to 320 acres thereof, there was no evidence before the Board of Directors of the Madera Irrigation District to support the finding of fact that the lands of petitioners would be benefited by the operations of the Madera Irrigation District.

VI

That it is true that at the time of the hearing of said Petition, as heretofore set forth, and the making of the Order that said Petition for Exclusion be denied, the respondent Madera Irrigation District had completed its negotiations with the United States of America for the terms of a contract for the purchase of irrigation water and the construction of a distribution system, which said contract was introduced herein, marked "Petitioners' Exhibit 4." That it is true that the respondent Madera Irrigation District had presented the terms of said contract to, and obtained the approval of, the California District Securities Commission. That it is true that the respondent Madera Irrigation District had thereafter given notice for the calling of an election in the Madera Irrigation District [fol. 25] for the purpose of authorizing the Directors of the Madera Irrigation District to execute said contract with the United States of America. That it is true that thereafter, on the 9th day of May, 1951, an election was held in the Madera Irrigation District. That it is true that the results of said election were legally determined by the Board of Directors of the said Madera Irrigation District on the 13th day of May, 1951. That it is true that on the 14th day of May, 1951, the said contract (petitioners' Exhibit 4, herein) was executed by the Madera Irrigation District, and by Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, on the behalf of the United States of America. That it is true that the entire operations of said District in relation to the said lands of the petitioners will be pursuant to and in conformity with said contract. That it is true that said contract (petitioners' Exhibit 4 herein), by its terms, prohibits the delivery of water by the Madera Irrigation District to any one person owning more than 160 acres of land, or, as in the case of these petitioners, where the petitioners are married and the property is community property, prohibits the delivery of water by the Madera Irrigation District to more than 320 acres of the land of the petitioners, unless the petitioners comply with the provisions of Section 28 of said contract.

VII

That it is true that if Sections 28, 29, and 30 of the [fol. 26] Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System, are valid and in force and effect, that, except as to 320 acres thereof, the lands of petitioners described in said Petition will not be benefited by the operations of the Madera Irrigation District. That it is true that, except as to 320 acres thereof, the only benefit that can be received by the lands of the petitioners from the operations of the Madera Irrigation District is the delivery of a supplemental surface supply of water for said lands.

VIII

That the allegations contained in paragraph XIII of petitioners' Petition for Writ of Mandate are true.

IX

That it is true that petitioners have paid assessments on said tract of land to the Madera Irrigation District for the past twenty (20) years.

X

That it is true that the Madera Irrigation District, prior to the 24th day of May, 1939, acquired the land comprising Friant Dam Site, certain gravel bearing lands, and certain water rights on the San Joaquin River and its tributaries, which said properties were acquired by the Madera Irrigation District from funds derived through the assessment of lands within its boundaries, including the lands of petitioners herein. That it is true that the Madera Irrigation District and the United States, on the 24th day of [fol. 27] May, 1939, executed a contract assigned symbol and number "Ilr-1126" and entitled, "Contract for Purchase of Property and Water Rights." That it is true that in said 1939 contract, it was provided, among other things, that the Madera Irrigation District would convey to the United States the land comprising Friant Dam Site,

certain gravel bearing lands therein described, and all of the District's right, title and interest in and to all of the District's water rights on the San Joaquin River and its tributaries. That it is true that pursuant to the terms of said 1939 contract, the Madera Irrigation District became entitled to purchase from Friant Dam and Reservoir a permanent supplemental supply of Class 1 and Class 2 water as therein more particularly described.

XI

That it is true that the current expenses of operating the Madera Irrigation District and the repayment of any sums advanced to or borrowed by the Madera Irrigation District and the sums used to construct canals, headgates or other works of the District, are derived from assessments against all of the lands in the District, including the lands of petitioners herein.

XII

That it is true that Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4 herein) are by [fol. 28] their nature susceptible to division from the remainder of the contract in respect to the matters and things contemplated and embraced therein, and the remainder of said Contract is not dependent upon said Sections, nor was it intended by the parties that said remainder be dependent upon said Sections.

XIII

That it is true, that if Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) are void and of no force or effect, and a supplemental surface supply of water is delivered to the lands of the petitioners by the Madera Irrigation District, that the lands of the petitioners will be benefited by the operations of the District.

XIV

That it is true that petitioners did not consent to the terms of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System, dated the 14th day of May, 1951. That it is true that petitioners did not consent to the terms of that agreement entitled "Contract for Purchase of Property and Water Rights" between the Madera Irrigation District and the United States, dated the 24th day of May, 1939.

XV

That it is true that the execution by the respondent Board of Directors of the respondent Madera Irrigation [fol. 29] District of the aforesaid Contract for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) adopted and applied a general plan of operation for the Madera Irrigation District that will benefit only 329 acres of the lands of the petitioners.

Conclusions of Law

1. That the object and purposes for which the Madera Irrigation District was and is formed is to benefit all of the lands within the District by obtaining and distributing such water as may be necessary for the irrigation thereof, thus enabling each land owner within the District to have for his land the benefit of a common system of irrigation.

2. That all of the rights and other properties of the Madera Irrigation Distri. are held in trust for the uses and purposes hereinbefore set forth. That the beneficiaries of the trust are all of the land owners in the District, including the petitioners herein. That the interests of petitioners, as beneficiaries of this trust, are vested private property rights.

3. That if Sections 28, 29 and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) were in force and effect

as a part of the general plan of operation of the District, the petitioners herein would be entitled to the writ prayed for.

4. That Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for [fol. 30] Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein), when applied to petitioners, are in violation of Section I of the 14th Amendment to the Constitution of the United States, the 5th Amendment to the Constitution of the United States, Section I of Article I of the Constitution of the State of California, Section XIII of Article I of the Constitution of the State of California, and Section XIV of Article I of the Constitution of the State of California, and said Sections of said Contract are, when so attempted to be applied, void and of no force or effect.

5. That Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) are severable from the remainder of said Contract.

6. That petitioners cannot legally be denied, for any of their lands, their division of the water delivered to the Madera Irrigation District.

7. That if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should continue to require compliance with the excess land conditions or limitations set forth in paragraphs 28, 29 or 30 of the Contract between respondents and the United States (petitioners' Exhibit 4, herein) as a condition to petitioners receiving for all of their land their fair, ratable portion of [fol. 31] the water distributed by the District for irrigation purposes, then, and in that event, a peremptory writ of mandate should issue from this Court directing and compelling the Board of Directors of the Madera Irrigation District to make its order vacating and setting aside its previous order of April 12, 1951, denying petitioners' petition for exclusion, and to make its order excluding from

the Madera Irrigation District the lands of petitioners, except as to 320 acres thereof.

8. That if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should supply all of the lands of petitioners their fair, ratable portion of the water distributed by the District for irrigation purposes, without imposition of the excess land conditions or limitations set forth in paragraphs 28, 29, or 30 of the Contract between the respondent and the United States (petitioners' Exhibit 4, herein), then, and in that event, the writ herein prayed for should be denied.

9. That petitioners are entitled to recover their costs from respondents.

Let judgment be entered accordingly.

Dated this 28 day of January, 1952.

Arthur C. Shepard, Judge of the Superior Court.

[fol. 34] In the Superior Court of the State of California in and for the County of Madera

No. 8497

Phillip Albonico and Jane E. Albonico, his wife, Petitioners,

v.

Madera Irrigation District, A Corporation, and John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans and John A. Franchi, Directors of the Madera Irrigation District, Respondents.

Judgment—January 28, 1952

An alternative writ of mandate having issued herein on the 14th day of May, 1951, in the above entitled matter, and the same having come regularly before the Court for

hearing on the 8th day of June, 1951, in the Superior Court of the State of California, in and for the County of Madera, pursuant to an order to show cause issued in connection with said alternative writ of mandate, Green, Green, Plumley & Kuney, by Denslow Green and Kenneth A. Kuney, appearing as attorneys for petitioners, and David E. Peckinpah and L. N. Barber appearing as attorneys for respondents, and the Court having heard the testimony and having examined the proofs offered by the petitioners, and the Court being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, and having directed that the writ prayed for herein should be granted if the respondent Board of Directors of the respondent Madera Irrigation District continues to apply the present general plan of operation of the Madera [fol. 35] Irrigation District; now, therefore, by reason of the law and findings aforesaid:

It Is Ordered, Adjudged and Decreed that if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should continue to require compliance with the excess land conditions or limitations set forth in paragraphs 28, 29, or 30 of the Contract between the respondent and the United States (petitioners' Exhibit 4, herein) as a condition to petitioners receiving for all of their land their fair, ratable portion of the water distributed by the District for irrigation purposes, then, in that event, a peremptory writ of mandate shall issue from this Court directing and compelling the Board of Directors of the Madera Irrigation District to make its order vacating and setting aside its previous order of April 12, 1951, denying petitioners' petition for exclusion, and to make its order excluding from the Madera Irrigation District the lands of petitioners, except as to 320 acres thereof.

It Is Further Ordered, Adjudged and Decreed that if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should supply all of the lands of petitioners their fair, ratable portion of the water distributed by the District for irrigation purposes, without imposition of the excess land conditions or limita-

tions set forth in paragraphs 28, 29, or 30 of the Contract between the respondent and the United States (petitioners' [fol. 36] Exhibit 4, herein); then, and in that event, the writ herein prayed for shall be denied.

It Is Further Ordered, Adjudged and Decreed that petitioners have and recover of the respondents their costs and disbursements in this action, amounting to One hundred forty nine and 45/100 Dollars."

Dated this 28 day of January, 1952.

Arthur C. Shepard, Judge of the Superior Court.

[File endorsement omitted]

[fol. 42] In the Superior Court of the State of California, in and for the County of Madera

Madera, California.

Court Convenes.

Present: Hon. Arthur C. Shepard, Judge
Erma E. Chenvront, Clerk
F. E. Rodman, Deputy Sheriff

Hon. Arthur C. Shepard presiding on designation of Judicial Council.

Civil No. 8497

Phillip Albonico, et ux, Plaintiffs,

v.

Madera Irrigation District, et al., Defendants.

Minutes of June 8, 1951—Demurrer

The above entitled cause came on regularly for hearing. Messrs. Green, Green, Plumley & Kuney by Denslow Green and Kenneth Kuney, counsel for Plaintiffs, and D. E. Peckinpah and L. N. Barber, counsel for Defendants, are present in Court. L. N. Barber argues the Demurrer

on behalf of the Defendants. Kenneth Kuney argues the Demurrer on behalf of the Plaintiffs. Court orders that the hearing on Merits be heard at this time. It is stipulated that Directors have viewed the property in question. It is stipulated by respective counsel, that the map referred to on Page 45 of the Transcript to Petition be admitted in evidence. Map, State of California, Department of Public Works, Division of Water Resources, Lines of Equal Water Elevation in Wells in the Upper San Joaquin Valley in the Fall of 1949, is offered in evidence, admitted and [fol. 43] marked Petitioner's Exhibit No. 1. Reporter's Transcript, parts applicable to this hearing, is offered in evidence, admitted and marked Petitioner's Exhibit No. 2. It is stipulated by respective counsel, that all maps referred to in Reporter's Transcript be used as evidence and admitted and marked Petitioner's Exhibit No. 3. Copy of Contract between U. S. Government and Madera Irrigation District, is offered in evidence, admitted and marked Petitioner's Exhibit No. 4. It is stipulated by respective counsel, that Exhibit No. 4 is Contract referred to in Petitioner's Complaint. Denslow Green makes statement to the Court. David Peckinpah makes statement to the Court. The Demurrer will stand submitted upon filing of Briefs 20—20 & 10.

[fol. 46] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MADERA

No. 8497

[Title omitted]

ORDER FOR CORRECTION OF MINUTES AND TRANSCRIPT ON APPEAL—May 22, 1952

On stipulation of the parties, and good cause appearing therefor,

It Is Ordered that the minutes of the Court in the above entitled action, dated June 8, 1951, be corrected by Substituting for the sentence reading as follows: "It is stipu-

lated that Directors have viewed the property in question", the following, to wit: "It is stipulated that the Directors viewed the property described in the petition for exclusion after the hearing of said petition and before the making of the order denying the petition."

It Is Further Ordered that the transcript on appeal be corrected accordingly.

Dated: May 22, 1952

Arthur C. Shepard, Assigned Judge of Said Superior Court.

[fol. 48]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Sac. No. 6460

PHILLIP ALBONICO, et al., Plaintiffs and Respondents,

v.

MADERA IRRIGATION DISTRICT, et al., Defendants and Appellants.

NOTICE OF APPEAL BY THE MADERA IRRIGATION DISTRICT TO THE SUPREME COURT OF THE UNITED STATES

I

Notice is hereby given that the Madera Irrigation District, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California affirming the judgment of the Superior Court in and for the County of Madera, State of California, which, in effect, declared invalid that certain contract between the Madera Irrigation District and the United States dated May 14, 1951. The opinion of the Supreme Court of the State [fol. 49] of California was filed on January 24, 1957; rehearing was denied by that Court on February 19, 1957.

This appeal is taken pursuant to 28 U.S.C.A. Section 1257 (1).

II

The Clerk of the Supreme Court of the State of California will please prepare a transcript of the record in this proceeding for transmission to the Clerk of the Supreme Court of the United States. He shall include in said transcript the following:

1. The record consisting of Clerks-Trans.—1 Vol. heretofore filed with the Supreme Court of the State of California on the appeal to said Court.
2. The opinion in this proceeding filed January 24, 1957.
3. The petition of the Madera Irrigation District for a rehearing filed February 6, 1957, the answers thereto, and all the *amicus curiae* briefs filed in support thereof or opposition thereto, and the answers to such *amicus curiae* briefs.
4. The Order of February 19, 1957, denying a rehearing.
5. This Notice of Appeal.

III

The questions presented by this appeal all relate to the validity of the previously identified contract between the [fol. 50] United States and the Madera Irrigation District, an agency of the State of California, providing for delivery of a water supply to the District from the federal Central Valley Project, and the expenditure and repayment of funds for construction of a distribution system by the United States to distribute this water supply within the District.

These questions are as follows:

I. Section 46 of the *Omnibus Adjustment Act of 1926* (~~44 Stat. 649 (1926), 43 U.S.C. Section 423e (1952)~~) precludes delivery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

(a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

(b) Is this section valid or does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

(c) The California *Irrigation District Federal Cooperation Law* (Calif. Water Code Sections [fol. 51] 23175 et seq.) provides for the delivery and distribution of water acquired under any contract with the United States "under the relevant acts of Congress" (id. Section 23197 (a)), and "in accordance with the applicable acts of Congress" (id. Section 23200). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in the California *Irrigation District Federal Cooperation Law?*

(d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed is (or is not) an unlimited title in the United States?"

(e) Does Section 8 of the *Reclamation Act of 1902* (32 Stats. 390 (1902), 43 U.S.C. Sections 372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contract involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of California have jurisdiction to determine:

a. What water rights or title the United States has [fol. 52] acquired?

b. What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in Paragraph 6 are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in Section 46 of the *Omnibus Adjustment Act of 1926* deprive the owners thereof of those rights?

David E. and Denver C. Peckinpah, By Denver C. Peckinpah, Attorneys for the Appellant, Madera Irrigation District, 1229 "N" Street, Fresno 21, California.

[fol. 53] Affidavit of service (omitted in printing).

[fol. 2] David S. Licker, District Attorney, Court House, Santa Barbara, California, Telephone 4165, Lawrence M. Parma, Deputy District Attorney, 15 West Carrillo Street, Santa Barbara, California, Telephone 2-0031, Attorneys for Plaintiff.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

No. 43906

The Santa Barbara County Water Agency, created by the laws of the State of California, Plaintiff,

v.

All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated September 12, 1949, by and Between the Santa Barbara County Water Agency and the United States of America, Entitled "Contract for the Furnishing of Water to Member Units of Santa Barbara County Water Agency" Which Contract was Executed on September 12, 1949, by Said Agency and the United States of America, or the Proceedings of the Board of Directors of the Santa Barbara County Water Agency or the Proceedings of the Santa Barbara County Water Agency Leading Up to and Including the Making of Said Contract and the Validity of the Provisions of Said Contract, or in the [fol. 3] Proceedings had for the Organization of the Santa Barbara County Water Agency; and all Persons and Parties who Have any Interest in, or who are Interested in, or are to be Interested in, or Claim to Have any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or any Part Thereof; and All Property Within Said Santa Barbara County Water Agency. All Persons and Parties who Have any Interest in, or who are Interested in, or are to be Interested in, or Claim to Have any Interest in: That Certain Contract Dated September 12, 1949, by and Between the Santa Barbara

County Water Agency and the Carpinteria County Water District, a County Water District, Entitled "Contract for the Furnishing of Water to Carpinteria County Water District" Which Contract was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the Carpinteria County Water District on December 7, 1949, or the Proceedings of the Board of Directors of the Carpinteria County Water District or the Proceedings of the Carpinteria County Water District, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading Up to and Including the Making of Said Last-Mentioned Contract and the Validity of the Provisions of Said Contract, or in the Proceedings had for the organization of Said Santa Barbara County Water Agency or Said Carpinteria County Water District; and All Persons and Parties who Have any Interest in, or who Are Interested in, or Claim to Have any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or Any Part Thereof, or Within Said Carpinteria County Water District, or any Part Thereof; and All Property Within Said Santa Barbara County Water Agency and Said Carpinteria County Water District.

All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated September 12, 1949, By and Between the Santa [fol. 4] Barbara County Water Agency and the Goleta County Water District, a County Water District, Entitled "Contract for the Furnishing of Water to Goleta County Water District" Which Contract Was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the Goleta County Water District on December 1, 1949, or the Proceedings of the Board of Directors of the Goleta County Water District or the Proceedings of the Goleta County Water District, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading up

to and Including the Making of Said Last-Mentioned Contract or the Validity of the Provisions of Said Contract, or in the Proceedings Had for the Organization of Said Santa Barbara County Water Agency or Said Goleta County Water District; and All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Claim to Have Any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or Any Part Thereof, or Within Said Goleta County Water District, or Any Part Thereof; and All Property Within Said Santa Barbara County Water Agency or Said Goleta County Water District.

All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated September 12, 1949, by and Between The Santa Barbara County Water Agency and the Montecito County Water District, a County Water District, Entitled "Contract for the Furnishing of Water to Montecito County Water District" Which Contract Was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the Montecito County Water District on December 8, 1949, or the Proceedings of the Board of Directors of the Montecito County Water District or the Proceedings of the Montecito County Water District, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading up to and Including the Making of Said Last-Mentioned Contract or the Validity of the Provisions of Said Contract, or in the Proceedings Had for the Organization of Said Santa Barbara County Water Agency or Said Montecito County Water District; and All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Claim to Have Any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or [fol. 5] Any Part Thereof, or Within Said Montecito County Water District, or Any Part Thereof; and All Property Within Said Santa Barbara County Water Agency or Said Montecito County Water District.

All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated December 8, 1949, by and Between the Santa Barbara County Water Agency and the Summerland County Water District, a County Water District, Entitled "Contract for the Furnishing of Water to Summerland County Water District" Which Contract Was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the Summerland County Water District on December 8, 1949, or the Proceedings of the Board of Directors of the Summerland County Water District or the Proceedings of the Summerland County Water District, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading up to and Including the Making of Said Last-Mentioned Contract or the Validity of the Provisions of Said Contract, or in the Proceedings Had for the Organization of Said Santa Barbara County Water Agency or Said Summerland County Water District; and All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Claim to Have Any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or Any Part Thereof, or Within Said Summerland County Water District, or Any Part Thereof; and All Property Within Said Santa Barbara County Water Agency and Said Summerland County Water District. All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated September 12, 1949, Executed by and Between the Santa Barbara County Water Agency and the City of Santa Barbara, a Municipal Corporation, Entitled "Contract for the Furnishing of Water to the City of Santa Barbara" Which Contract Was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the City of Santa Barbara on November 29, 1949, or the Proceedings of the Council of the City of Santa Barbara or the Proceedings of the

City of Santa Barbara, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading up to and Including the Making of Said Last-Mentioned Contract or the Validity of the Provisions of Said Contract, or the Proceedings Had for the Organization of Said Santa [fol. 6] Santa (sic) Barbara County Water Agency or Said City of Santa Barbara; and All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Claim to Have Any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or Any Part Thereof, or Within Said City of Santa Barbara, or Any Part Thereof; and All Property Within Said Santa Barbara County Water Agency and Said City of Santa Barbara, Defendants.

COMPLAINT IN REM TO DETERMINE VALIDITY OF CERTAIN CONTRACTS BETWEEN THE SANTA BARBARA COUNTY WATER AGENCY, AND THE UNITED STATES OF AMERICA, THE CARPINTERIA COUNTY WATER DISTRICT, GOLETA COUNTY WATER DISTRICT, MONTECITO COUNTY WATER DISTRICT, SUMMERLAND COUNTY WATER DISTRICT, AND THE CITY OF SANTA BARBARA RESPECTIVELY—February 6, 1950

Comes now the Plaintiff above-named and for cause of action complains and alleges as follows:

First Cause of Action

I:

The Santa Barbara County Water Agency (hereinafter for purposes of brevity sometimes referred to as the "Agency") now is, and at all times herein mentioned continuously was, and has been a district of the State of California duly and regularly organized and existing under and by virtue of the laws of the State of California, to wit: that certain Act of the Legislature of the State of California known as "The Santa Barbara County Water Agency Act", being Chapter 1501 of the Statutes of the Fifty-Sixth (56th) Session of the Legislature of the State

of California (1945 California Statutes, Chapter 1501, Pages 2780-2801), approved July 18, 1945, as amended by that certain Act of the Legislature of the State of California, being Chapter Twelve (12) of the Statutes of the State of California enacted at the 1949 Regular Session of the Legislature of the State of California, approved [fol. 7] February 3, 1949 (1949 California Statutes, Chapter 12, Pages 18 to 27).

II.

That by an Act of the First Extra Session of the Fifty-Sixth (56th) Legislature of the State of California entitled "An Act to validate the organization, boundaries, governing officers or boards, acts, proceedings and bonds of public bodies, to take effect immediately", approved February 12, 1946 (Chapter 17 of the 1st Extra Session of the 56th Legislature, 1947 California Statutes, pages 20-23), and by an Act of the 1949 Regular Session of the Legislature of the State of California entitled "An Act to validate the organization, boundaries, governing officers or boards, acts, proceedings, elections, and bonds of public bodies as herein defined, declaring the urgency of this act, to take effect immediately", approved June 30, 1949 (1949 California Statutes, Chapter 781, pages 1508-1511), said Legislature confirmed, validated, and declared legally established the boundaries of the Santa Barbara County Water Agency, and declared the members of the Board of Directors and the officers of said Agency theretofore elected or appointed and acting as such were the legally appointed or elected, qualified and acting members of such Board of Directors and officers.

III.

That C. W. Bradbury, Paul E. Stewart, R. B. McClellan, T. A. Twitchell and William N. Hollister now are and [fol. 8] constitute, and continuously at all times herein mentioned since January 3, 1949, have been and constitute, the whole of the Board of Directors of the Santa Barbara County Water Agency; that at all times from September 15, 1945, continuously to January 3, 1949, the same persons

above-named were and constituted said Board of Directors, save and except that during said period last mentioned J. Monroe Rutherford was a member of said Board of Directors in the place of William N. Hollister who was not then such a member; and at all times herein mentioned T. A. Twitchell was the Chairman of said Board of Directors, and J. E. Lewis now is, and continuously at all times herein mentioned since January 3, 1949 has been, the Clerk of the Santa Barbara County Water Agency.

IV

That the Defendants in this cause of action are as follows: all parties or persons who have any interest in, or are to be interested in, or claim to have any interest in: That certain contract dated September 12, 1949, executed by and between the Santa Barbara County Water Agency and the United States of America entitled "Contract for the Furnishing of Water to Member Units of Santa Barbara County Water Agency", or the proceedings of the Board of Directors of the Santa Barbara County Water Agency, or the proceedings of the Santa Barbara County Water Agency leading up to and including the making of said contract, or the validity of the provisions of said contract, or in the proceedings had for the organization of [fol. 9] the Santa Barbara County Water Agency; and all persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in or lien upon the property within said Santa Barbara County Water Agency or any part thereof; and all property within said Santa Barbara County Water Agency.

V

In order to secure additional water for the lands and inhabitants of certain portions of the Agency, in need thereof, to wit: Those portions of the Agency lying within the City of Santa Barbara, the Carpinteria, Goleta, Montecito and Summerland County Water Districts and the Santa Ynez River Water Conservation District, the Board of Directors of the Agency, on or about September 15,

1945, commenced, and has since pursued negotiations with the United States of America, Department of the Interior, Bureau of Reclamation, in an endeavor to obtain from the project commonly designated by said Bureau of Reclamation as "the Cachuma Unit of the Santa Barbara County Project, California" a supply of water for use within the Agency. As a result of such negotiations, the United States of America, represented by Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, has offered and agreed to furnish to the Agency and to said City of Santa Barbara, Carpinteria, Goleta, Montecito and Summerland County Water Districts and Santa Ynez River Water [fol. 10] Conservation District, a supply of water for irrigation and municipal purposes and for the irrigation of the land within said City and said County Water Districts and said Water Conservation District, in the amount and upon the terms and conditions which are set forth in the contract between the United States of America and the Santa Barbara County Water Agency, dated September 12, 1949, a true copy of which is attached hereto, marked Exhibit "A", and by reference incorporated herein as if hereat fully set forth, and which is hereinafter for purposes of brevity sometimes referred to as the "Master Contract".

VI

That on the 12th day of September, 1949, the Board of Directors of said Agency, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the usual and regular place of meeting of said Board, to wit: the Board of Supervisors meeting room in the County Court House in the City of Santa Barbara, all five members of said Board being present and voting therefor, did duly and regularly pass and adopt Resolution Number Nine (9) finding that all liabilities incurred by the Agency under said proposed Master Contract could be repaid as to both principal and interest from revenues derived from taxes levied pursuant to section 10.1 of the Santa Barbara County Water Agency Act and from payments to be made to the Agency by its respective member

units (being the aforesaid City and Districts) pursuant to written contracts providing for the payment currently [fol. 11] by said respective member units of whatever amounts might be necessary to pay the portion of the cost of any water or water supply to be furnished or sold to the Agency and to such respective member units, and finding that no Agency election under section 6.1 of said Santa Barbara County Water Agency Act was necessary or required as a condition to the execution by the Agency of said proposed Master Contract, and authorizing forthwith the execution by the Agency of said proposed Master Contract and authorizing and requiring said T. A. Twitchell, the Chairman of the Board of Directors of the Agency, and said J. E. Lewis, the Clerk of the Agency, to forthwith execute said proposed Master Contract on behalf of and in the name of the Agency and to affix to said Master Contract the seal of the Agency. That a true copy of said Resolution Number Nine (9) is attached hereto, marked Exhibit "B", and by reference incorporated herein as if hereat fully set forth.

VII

That immediately thereafter, on said 12th day of September, 1949, pursuant and agreeable to said Resolution Number Nine (9), said T. A. Twitchell and said J. E. Lewis, in their aforesaid capacities as Chairman and Clerk as aforesaid, did, at the City of Santa Barbara, County of Santa Barbara, State of California, execute said Master Contract on behalf of and in the name of the Agency and said Clerk did affix the seal of the Agency thereto, and did deliver said contract to the United States of America.

[fol. 12] VIII

That thereafter said Master Contract, on said 12th day of September, 1949, at the City of Santa Barbara, County of Santa Barbara, State of California, was duly and regularly executed and delivered to the Agency, by the United States of America, acting for that purpose by and through Richard L. Boke, the duly appointed, acting and qualified Regional Director, Region 2, Bureau of Reclamation of

the United States Department of the Interior, said Richard L. Boke being duly and regularly empowered by the United States of America so to do. That thereafter said Master Contract was endorsed thereon "Approved as to legal form and sufficiency, John K. Bennett, Acting Regional Counsel" and was endorsed thereon with an identification number, to wit: "Contract Symbol & No. 175r-1802".

IX

That on the 6th day of June, 1949, at an adjourned regular meeting of the Board of Directors of the Agency, duly and regularly held on said day at the aforementioned usual and regular place of meeting of said Board, all members of said Board being present except C. W. Bradbury, and all members present voting therefor, said Board of Directors, by resolution, to wit: Resolution Number Seven (7), did approve said proposed Master Contract as to form, and by said Resolution Number Seven (7) did direct the Chairman of said Board of Directors and the [fol. 13] Clerk of said Agency to submit the proposal to enter into a contract with the United States, as embodied in said proposed Master Contract and the said Resolution Number Seven (7) approving said proposed Master Contract as to form, with such plans and estimates of cost as had been made in connection therewith, to the California Districts Securities Commission for such investigation, examination, report and other proceedings as might be required by law. A true copy of said Resolution Number Seven (7) is attached hereto, marked Exhibit "C", and by reference incorporated herein as if hereat fully set forth.

X

That thereafter on the 14th day of June, 1949, the aforesaid Chairman of the Board of Directors of the Agency and the aforesaid Clerk of the Agency, pursuant and agreeable to said Resolution Number Seven (7), did submit said proposal to enter into a contract with the United States, as embodied in said proposed Master Contract and said Resolution Number Seven (7), with such plans and estimates of cost as had been made in connection therewith,

to the California Districts Securities Commission, for its investigation, examination, report and other proceedings as might be required by law.

XI

That thereafter the California Districts Securities Commission did make an examination of said proposal as embodied in said proposed Master Contract and said Resolu- [fol. 14] tion Number Seven (7) with said plans and estimates of cost made in connection therewith, and thereafter, and upon the 7th day of July, 1949, did make its report thereon, in writing, to the Board of Directors of the Agency, which report was thereafter filed with the Clerk of the Agency.

XII

That said Master Contract, as executed by the United States of America and the Agency, is in all respects the same as the copy of the proposed Master Contract submitted to the California Districts Securities Commission as aforesaid, except that, pursuant to the report and recommendation of said Commission, Article 25(b) was added to said Master Contract.

XIII

That Article 29(b) of the Master Contract provides as follows:

> "In the event that within one year after the execution of this contract, there have not been executed contracts between the Agency and districts which in the aggregate will provide for the disposition of at least 8,100 acre-feet per year of the water to be made available pursuant hereto by the United States during the first period hereof, then this contract shall be of no force or effect. If this contract becomes effective but not all the proposed member units named in [fol. 15] sections (i) to (n), both inclusive, of Article 9 hereof execute such contracts with the Agency, then any provision hereof relating to any such proposed

member unit not executing such an Agency contract shall be disregarded and shall be given no force or effect and shall not create any right or liability in favor of or against the United States, the Agency, any governmental unit, city, district, person, corporation or association whether a party hereto or not."

XIV

That on the 12th day of September, 1949, and after the aforesaid Master Contract had been executed by both parties and delivered, the Board of Directors of said Agency at a duly and regularly called, noticed and held special meeting of said Board on said day, at the aforementioned usual and regular meeting place of said Board, all five members of said Board being present and voting therefor, did duly and regularly pass and adopt Resolution Number Ten (10) authorizing the execution forthwith by the Agency of six (6) proposed contracts with the aforesaid Districts and City, which contracts are hereinafter in this paragraph described as to title, parties and date of filing with the Agency, and requiring and authorizing T. A. Twitchell, Chairman of the Board of Directors, and J. E. Lewis, Clerk of the Agency, to forthwith execute [fol. 16] each of said last-mentioned proposed contracts (hereinafter for purposes of brevity sometimes called "member unit contracts") for and on behalf of and in the name of the Agency and to affix the seal of the Agency to each such proposed member unit contract, and requiring the said Clerk, after execution by the Agency of such proposed member unit contracts, to deliver the same to the respective proposed member units named in such proposed member unit contracts. Said proposed member unit contracts hereinabove referred to were as follows:

Proposed Member Unit Contract #	Parties to Proposed Member Unit Contract	Title of Proposed Member Unit Contract	Date of Filing Proposed Member Unit Contract with Clerk of Agency
1	Santa Barbara County Water Agency and Goleta County Water District	Contract for the Furnishing of Water to Goleta County Water District	September 12, 1949
2	Santa Barbara County Water Agency and Montecito County Water District	Contract for the Furnishing of Water to Montecito County Water District	September 12, 1949
3	Santa Barbara County Water Agency and Summerland County Water District	Contract for the Furnishing of Water to Summerland County Water District	September 12, 1949
[fol. 17]			
4	Santa Barbara County Water Agency and Carpinteria County Water District	Contract for the Furnishing of Water to Carpinteria County Water District	September 12, 1949
5	Santa Barbara County Water Agency and the City of Santa Barbara	Contract for the Furnishing of Water to the City of Santa Barbara	September 12, 1949
6	Santa Barbara County Water Agency and the Santa Ynez River Water Conservation District	Contract for the Furnishing of Water to Santa Ynez River Water Conservation District	September 12, 1949

XV

That immediately thereafter, and on September 12, 1949, pursuant and agreeable to said Resolution Number Ten (10), said T. A. Twitchell and said J. E. Lewis, in their aforesaid capacities as Chairman and Clerk as aforesaid, did execute each of the aforesaid proposed member unit contracts on behalf of and in the name of the Agency, and said Clerk did affix the seal of the Agency to each of such proposed member unit contracts, and thereafter the said Clerk did deliver said proposed member unit contracts, as so executed, to the respective member units therein named.

XVI

That on the 29th day of November, the City of Santa [fol. 18] Barbara, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of said City, 11,405 votes being cast in favor of the enactment of, and 3,680 votes being cast against the enactment of, said ordinance, which ordinance is and was entitled as follows:

"An Ordinance of the City of Santa Barbara, California, Approving and Entering Into a Contract Between the Santa Barbara County Water Agency, Established by Chapter 1501 of the 1945 Statutes of California, as Amended, and the City of Santa Barbara, a Municipal Corporation of the State of California Duly Organized and Existing Under the Laws Thereof, for the Furnishing by Said Santa Barbara County Water Agency to Said City of Santa Barbara, a Water Supply From Cachuma Unit to and for the Use and Benefit of Said City of Santa Barbara, for Which Said City of Santa Barbara Will Make Payment to Said Santa Barbara County Water Agency or to the United States Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract, and Authorizing and Directing the Officers of the City of Santa Barbara to Sign, Countersign, Execute, Deliver and Do All

[fol. 19] Things Necessary to Enter Into and Consummate Said Contract All in Accordance to Law and the Provisions Hereof."

which ordinance approved and entered into the aforesaid proposed contract between the Agency and the said City theretofore executed by the Agency and authorized and directed the officers of said City to sign, countersign, execute, deliver and do all things necessary to enter into and consummate said contract last herein mentioned, all in accordance with law and said ordinance.

XVII

That thereafter, pursuant and agreeable to said ordinance, and on November 29, 1949, the officers of said City did sign, countersign, execute and deliver said contract last-mentioned to the Santa Barbara County Water Agency, and did date said contract as of September 12, 1949. That a true copy of said contract last herein mentioned is attached hereto, marked Exhibit "D", and by reference incorporated herein as if hereat fully set forth.

XVIII

That on the 28th day of November, 1949, the Carpinteria County Water District, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of said District; 738 votes being cast in favor of the enactment of, and 197 votes being cast against the enactment of, said ordinance, which ordinance is and was entitled as follows:

[fol. 20] "An Ordinance of Carpinteria County Water District Authorizing and Directing the Proper Officers of Carpinteria County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Carpinteria County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Carpinteria County Water District, for Which

Said Carpinteria County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aformentioned Contract."

which ordinance authorized and directed the proper officers of Carpinteria County Water District, by and on behalf of said Carpinteria County Water District, to execute and enter into the aforesaid proposed contract between said District and the Agency, theretofore executed by the Agency.

XIX

That thereafter, on the 7th day of December, 1949, the Board of Directors of the Carpinteria County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the regular and usual place of meeting of said Board, to wit: at the [fol. 21] Veterans Memorial Building in Carpinteria in said District, four of the five members of said Board being present, and all said members present voting therefor, did duly pass and adopt Resolution Number Fifty-five (55) authorizing and directing the proper officers of Carpinteria County Water District for and on behalf of said District to execute and enter into the aforesaid proposed contract between said District and the Agency theretofore executed by the Agency.

XX

That thereafter and on December 7, 1949, pursuant and agreeable to the ordinance and resolution last mentioned, at Carpinteria in the County of Santa Barbara, State of California, the proper officers of said Carpinteria County Water District did date said last-mentioned contract as of September 12, 1949, and did execute, enter into and deliver to the Agency on behalf of said District the contract last mentioned. That a true copy of said last-mentioned contract is attached hereto, marked Exhibit "E", and by reference incorporated herein as if hereat fully set forth.

XXI

That on the 29th day of November, 1949, the Goleta County Water District, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of said District, 1,642 votes being cast in favor of the enactment of, and 132 votes being cast against the enactment of, said [fol. 22] ordinance, which ordinance is and was entitled as follows:

> "An Ordinance of Goleta County Water District Authorizing and Directing the Proper Officers of Goleta County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Goleta County Water District of a Water Supply from Cachuma Unit to and for the Use and Benefit of Said Goleta County Water District, for which Said Goleta County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract."

which ordinance authorized and directed the proper officers of Goleta County Water District, by and on behalf of said Goleta County Water District, to execute and enter into the aforesaid proposed contract between said District and the Agency theretofore executed by the Agency.

XXII

That thereafter, on the 1st day of December, 1949, the Board of Directors of the Goleta County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the regular and usual [fol. 23] place of meeting of said Board, to wit: at the Santa Barbara County Walnut Growers Association Building at Goleta, in said District, four of the five members of said Board being present, and all members present voting therefor, did duly pass and adopt Resolution Num-

ber Fourteen (14) authorizing and directing the proper officers of Goleta County Water District for and on behalf of said District to execute and enter into the aforesaid proposed contract between said District and the Agency theretofore executed by the Agency.

XXIII

That thereafter and on December 1, 1949, pursuant and agreeable to the ordinance and resolution last mentioned, the proper officers of said Goleta County Water District did date said contract last mentioned as of September 12, 1949, and did execute, enter into and deliver to the Agency on behalf of said District the contract last mentioned. That a true copy of said contract last-mentioned is attached hereto, marked Exhibit "F", and by reference incorporated herein as if hereat fully set forth.

XXIV

That on the 28th day of November, 1949, the Montecito County Water District, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of said District, 1,294 votes being cast in favor of the enactment of, and 196 votes being cast against the enactment of, said ordinance, [fol. 24] which ordinance is and was entitled as follows:

> "An Ordinance of Montecito County Water District Authorizing and Directing the Proper Officers of Montecito County Water District to Execute and Enter Into a Contract with the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Montecito County Water District of a Water Supply from Cachuma Unit to and for the Use and Benefit of said Montecito County Water District, for Which Said Montecito County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract."

which ordinance authorized and directed the proper officers of Montecito County Water District, by and on behalf of said Montecito County Water District, to execute and enter into the aforesaid proposed contract last mentioned between said District and the Agency theretofore executed by the Agency.

XXV

That thereafter on the 8th day of December, 1949, the Board of Directors of the Montecito County Water District, at a duly and regularly called, noticed and held [fol. 25] special meeting of said Board on said day, at the regular and usual place of meeting of said Board, to wit: at the office of said Board at 583 San Ysidro Road in said District, all five members of said Board being present and voting therefor, did duly pass and adopt Resolution Number Two Hundred Ninety-three-A (293A) authorizing and directing the proper officers of Montecito County Water District for and on behalf of said District to execute and enter into the aforesaid proposed contract last mentioned between said District and the Agency theretofore executed by the Agency.

XXVI

That thereafter and on December 8, 1949, pursuant and agreeable to the ordinance and resolution last mentioned, the proper officers of said Montecito County Water District did date said contract last mentioned as of September 12, 1949, and did execute, enter into and deliver to the Agency on behalf of said District the contract last mentioned. That a true copy of said contract last mentioned is attached hereto, marked Exhibit "G", and by reference incorporated herein as if hereat fully set forth.

XXVII

That on the 28th day of November, 1949, the Summerland County Water District, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of

said District, 146 votes being cast in favor of the enactment [fol. 26] of, and 31 votes being cast against the enactment of, said ordinance, which ordinance is and was entitled as follows:

"An Ordinance of Summerland County Water District Authorizing and Directing the Proper Officers of Summerland County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Summerland County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Summerland County Water District, for Which Said Summerland County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract."

which ordinance authorized and directed the proper officers of Summerland County Water District by and on behalf of said Summerland County Water District to execute and enter into the aforesaid proposed contract last mentioned between said District and the Agency theretofore executed by the Agency.

XXVIII

That thereafter on the 8th day of December, 1949, the Board of Directors of the Summerland County Water District, at a duly and regularly called, noticed and held [fol. 27] special meeting of said Board on said day, at the regular and usual place of meeting of said Board, to wit: at Summerland School in said District, all five members of said Board being present and voting therefor, did duly pass and adopt a resolution authorizing and directing the proper officers of Summerland County Water District for and on behalf of said District to execute and enter into the aforesaid proposed contract last mentioned between said District and the Agency theretofore executed by the Agency.

XXIX

That thereafter and on December 8, 1949, pursuant and agreeable to the ordinance and resolution last mentioned, the proper officers of said Summerland County Water District did date said contract last mentioned as of December 8, 1949, and did execute; enter into and deliver to the Agency on behalf of said District the contract last mentioned. That a true copy of said contract last mentioned is attached hereto, marked Exhibit "H", and by reference incorporated herein as if hereat fully set forth.

XXX

That the Santa Ynez River Water Conservation District failed and refused to execute the hereinbefore mentioned proposed contract between said Santa Ynez River Water Conservation District and the Agency and rejected said contract, and the same has never been executed and is of no force nor effect.

[fol. 28]

XXXI

That each and every of the aforesaid contracts between the Agency and the Carpinteria, Goleta, Montecito and Summerland County Water Districts and said City was executed and delivered within one (1) year of the execution of the Master Contract, and said contracts executed as aforesaid between the Agency and said Districts and City provide in the aggregate for the disposition of at least 8,100 acre-feet, to wit: 8,200 acre-feet, per year of the water to be made available pursuant to the Master Contract by the United States during the first period of the Master Contract. Said contracts with said County Water Districts and said City provide for the following disposition of water during said first period to the respective contracting parties as follows:

City of Santa Barbara	3,300	acre-feet per year
Carpinteria County Water District	1,000	" " " "
Goleta County Water District	3,300	" " " "
Montecito County Water District	500	" " " "
Summerland County Water District	100	" " " "

XXXII

That each of said contracts executed by and between the Agency and said County Water Districts and City provides that such contract shall be subject to the terms of the Master Contract.

[fol. 29]

XXXIII

That each of said contracts executed by and between the Agency and said County Water Districts and City providing for the furnishing of water for irrigation uses includes Articles 25, 26, 27 and 28 of the Master Contract, with such revisions and modifications of such Articles as are necessary in the opinion of the Agency and the Secretary of the United States Department of the Interior.

XXXIV

That by the acts and proceedings held and taken as heretofore alleged said Santa Barbara County Water Agency was duly authorized to enter into and execute said Master Contract and said contracts with said County Water Districts and City and that said County Water Districts and City were duly authorized to enter into and execute said member unit contract; that each and every and all the acts and proceedings for and in connection with the authorization and execution of said Master Contract and said contracts with said County Water Districts and City were and are valid and lawful and all acts, conditions and things required by law and said Master Contract and said contracts with said County Water Districts and City to exist, happen, or be performed precedent to and in connection with the authorization and execution of said Master Contract and said contracts with said County Water Districts and City, did exist, happen, and were performed in regular and due time, form and manner as required by law, and said Agency was fully authorized [fol. 30] and empowered to enter into and execute said Master Contract and said contracts with said County Water Districts and City, and is fully authorized and empowered to perform and carry out the terms and conditions thereof on its part to be done, kept, performed and ob-

served, and that said Master Contract and said contracts with said County Water Districts and City and every term and provision thereof are and is within the power and authority of said Agency to execute, perform and carry out, and said County Water Districts and City were each fully authorized and empowered to execute said member unit contracts and each were fully authorized and empowered to perform and carry out the terms and conditions thereof on their respective parts to be kept, done, performed and observed, and every term and provision of said member unit contracts is within the power and authority of the respective County Water Districts and City to execute, perform and carry out.

XXXV

That on the 19th day of December, 1949, the Board of Directors of said Agency at a duly and regularly conducted regular meeting of said Board of Directors on said day, at the aforesaid usual and regular place of meeting of said Board, all five members of said Board being present and voting therefor, did duly and regularly pass and adopt Resolution Number Thirteen (13) of said Board of Directors, by which the Agency was directed to file and prosecute [fol. 31] in the above entitled Court appropriate legal action for the judicial examination, approval and confirmation of the proceedings had for the organization of the Agency and the proceedings of the Agency leading up to and including the making of the aforesaid Master Contract and said contracts with said County Water Districts and City and the validity of the provisions of each of said contracts, and authorizing the District Attorney of said County, who is ex-officio the Attorney of said Agency, to file such law suit or law suits for the aforesaid purposes as he deemed necessary and to prosecute the same in the name of and on behalf of the Agency, and authorizing the Chairman and Clerk of the Board of Directors of the Agency to sign and/or verify any and all pleadings therein on behalf of and in the name of the Agency.

Second Cause of Action

For a Further, Second and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the foregoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the Defendants in this cause of action, in addition to those specified in Paragraph IV of said First Cause of Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be [fol. 32] interested in, or claim to have any interest in: That certain contract dated September 12, 1949, by and between the Santa Barbara County Water Agency and the Carpinteria County Water District, a county water district, entitled "Contract for the Furnishing of Water to Carpinteria County Water District", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the Carpinteria County Water District on December 7, 1949, or the proceedings of the Board of Directors of the Carpinteria County Water District or the proceedings of the Carpinteria County Water District, or the proceedings of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned contract and the validity of the provisions of said last-mentioned contract, or in the proceedings had for the organization of said Santa Barbara County Water Agency or said Carpinteria County Water District; and all persons or parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency, or any part thereof, or within said Carpinteria County Water District, or any part thereof; and

all property within said Santa Barbara County Water Agency and said Carpinteria County Water District.

III

That continuously at all times herein mentioned the [fol. 33] Carpinteria County Water District was and now is a county water district duly organized and existing under and by virtue of that certain Act of the Legislature of the State of California, known as the "County Water District Act", being Chapter 592 of the Statutes of the 40th Session of the California Legislature, approved June 10, 1913 (1913 California Statutes, Chapter 592) and acts amendatory thereof and supplementary thereto, which acts, since October 1, 1949, constitute Division 12 of the Water Code of California, which Division, since said latter date, is known as "The County Water District Law".

IV

That continuously at all times herein mentioned since January 3, 1949, Charles A. Catlin, also known as C. A. Catlin, Stanley L. Shepard, Clarence R. Sawyer, Burchell W. Upson and Max Young constituted and now are the whole of the Board of Directors of said Carpinteria County Water District; and that continuously at all times in this paragraph mentioned, Stanley L. Shepard and Ferlys W. Thomas have been and now are, respectively, the President and Secretary of said Carpinteria County Water District.

V

That at all times herein mentioned the aforesaid President and Secretary of said District last mentioned were the proper officers of said Carpinteria County Water District to execute and enter into the aforementioned contract, [fol. 34] designated herein as Exhibit "E", for and on behalf of Carpinteria County Water District.

VI

That on September 26, 1949, the Board of Directors of said Carpinteria County Water District, at a duly and

regularly called, noticed and held special meeting of said Board on said day at the aforesaid usual and regular place of meeting of said Board, all five members of said Board being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance (being Ordinance No. 1) entitled:

"An Ordinance of the Board of Directors of Carpinteria County Water District Ordering and Calling a Special Election to Be Held in Said Carpinteria County Water District on Tuesday, the 22nd Day of November, 1949, for the Purpose of Submitting to the Qualified Electors of and in Said Carpinteria County Water District at Said Special Election an Ordinance for Enactment by Said Qualified Electors, Which Ordinance Shall Be Entitled:

'An Ordinance of Carpinteria County Water District Authorizing and Directing the Proper Officers of Carpinteria County Water District to Execute and Enter Into a Contract With the Santa Barbara [fol. 35] County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Carpinteria County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Carpinteria County Water District, for Which Said Carpinteria County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.'"

calling a special election to be held within said District last mentioned on November 22, 1949, for the purpose of submitting to the qualified electors in said District the following proposition:

"Shall the Ordinance Entitled: 'An Ordinance of Carpinteria County Water District Authorizing and Directing the Proper Officers of Carpinteria County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for

the Furnishing by the Santa Barbara County Water Agency to Said Carpinteria County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Carpinteria County Water [fol. 36] District, for Which Said Carpinteria County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.' Hereby Submitted to the Qualified Electors of Said Carpinteria County Water District for Voting Thereon by Said Qualified Voters Be Enacted by and for Said Carpinteria County Water District, Said Ordinance Containing Said Contract Being Set Forth in Full in Ordinance No. 1 Adopted by the Board of Directors of Carpinteria County Water District at Its Meeting Held the 26th Day of September, 1949"

VII

Notice of said special election was thereafter given in all respects for the time and in the manner prescribed by the laws of the State of California in such cases made and provided and by said Ordinance No. 1, and said notices of election as published and posted contained and set forth a full, true and correct copy of the ordinance submitted to said qualified electors of said Carpinteria County Water District, and a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors; and the Secretary of said District did, within ten (10) days prior to said [fol. 37] election, mail to each registered voter in said District, a sample ballot and polling place card in the form prescribed by law and said Ordinance No. 1, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors of said Carpinteria County Water District.

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 1, a special election was held in said Carpinteria County Water District, at which there was submitted to the qualified electors of said District the proposition set forth in Paragraph VI of this Second Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 1.

IX

That on the 28th day of November, 1949, being the first Monday after said special election, the Board of Directors of said Carpinteria County Water District, at a duly and regularly called, noticed and held special meeting of said Board, duly and regularly held on said day at the aforesaid usual and regular place of meeting of said Board, four of the five members of said Board being present, did duly and regularly meet as a canvassing board, and all said members present voting therefor, did duly and regu- [fol. 38] larly canvass the returns of said election and did duly and regularly make and enter in the records of said Board its finding and statement that the whole number of votes cast in said Carpinteria County Water District at said election was 935, and that of the total number of votes so cast, 738 votes were cast for said proposition and 197 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said Carpinteria County Water District, that said proposed ordinance was duly enacted by the electors of said Carpinteria County Water District and the execution of said proposed contract was duly authorized by said electors of said Carpinteria County Water District.

Third Cause of Action

For a Further, Third and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the foregoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the Defendants in this cause of action, in addition to those specified in Paragraph IV of said First Cause of Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in: That certain [fol. 39] contract dated September 12, 1949, by and between the Santa Barbara County Water Agency and the Goleta County Water District, a county water district, entitled "Contract for the Furnishing of Water to Goleta County Water District", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the Goleta County Water District on December 1, 1949, or the proceedings of the Board of Directors of the Goleta County Water District or the proceedings of the Goleta County Water District, or the proceedings of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned contract or the validity of the provisions of said contract, or in the proceedings had for the organization of said Santa Barbara County Water Agency or said Goleta County Water District; and all persons or parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency or any part thereof or within said Goleta County Water District, or any part thereof; and all property within said Goleta County Water District.

III

That continuously at all times herein mentioned the Goleta County Water District was and now is a county water district duly organized and existing under and by virtue of that certain Act of the Legislature of the State [fol. 40] of California, known as the "County Water District Act", being Chapter 592 of the Statutes of the 40th Session of the California Legislature, approved June 10, 1913 (1913 California Statutes, Chapter 592) and acts amendatory thereof and supplementary thereto, which acts,

since October 1, 1949, constitute Division 12 of the Water Code of California, which Division, since said latter date, is known as "The County Water District Law".

IV

That continuously at all times herein mentioned since January 3, 1949, Benjamin Hartman, Dee Dominic Pagliotti, Chester Rich, George W. Smith and Fred G. Stevens, constituted and now are the whole of the Board of Directors of said Goleta County Water District; and that continuously at all times in this paragraph mentioned, Fred G. Stevens and James Marchiando have been and now are, respectively, the President and Secretary of said Goleta County Water District.

V

That at all times herein mentioned the aforesaid President and Secretary of said District last mentioned were the proper officers of said Goleta County Water District to execute and enter into the aforementioned contract, designated herein as Exhibit "F", for and on behalf of Goleta County Water District.

VI

That on September 26, 1949, the Board of Directors of [fol. 41] said Goleta County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the aforesaid usual and regular place of meeting of said Board, all five members of said Board being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance (being Ordinance No. 1) entitled:

> "An Ordinance of the Board of Directors of Goleta County Water District Ordering and Calling a Special Election to Be Held in Said Goleta County Water District on Tuesday, the 22nd Day of November, 1949, for the Purpose of Submitting to the Qualified Electors of and in Said Goleta County Water District at Said Special Election an Ordinance for Enactment

by Said Qualified Electors, Which Ordinance Shall Be Entitled:

'An Ordinance of Goleta County Water District Authorizing and Directing the Proper Officers of Goleta County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Goleta County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of [fol. 42] Said Goleta County Water District, for Which Said Goleta County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.'"

calling a special election to be held within said District last mentioned on November 22, 1949, for the purpose of submitting to the qualified electors in said District the following proposition:

"Shall the Ordinance Entitled: 'An Ordinance of Goleta County Water District Authorizing and Directing the Proper Officers of Goleta County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Goleta County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Goleta County Water District, for Which Said Goleta County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and [fol. 43] Conditions of the Aforementioned Contract.' Hereby Submitted to the Qualified Electors of Said Goleta County Water District for Voting Thereon by Said Qualified Voters Be Enacted by and for Said Goleta County Water District, Said Ordinance Containing Said Contract Being Set Forth in Full in

Ordinance No. 1 Adopted by the Board of Directors of Goleta County Water District at Its Meeting Held the 26th Day of September, 1949"

VII

Notice of said special election was thereafter given in all respects for the time and in the manner prescribed by the laws of the State of California in such cases made and provided and by said Ordinance No. 1, and said notices of election as published and posted contained and set forth a full, true and correct copy of the ordinance submitted to said qualified electors of said Goleta County Water District, and a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors; and the Secretary of said District did, within ten (10) days prior to said election, mail to each registered voter in said District, a sample ballot and polling place card in the form prescribed by law and said Ordinance No. 1, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred [fol. 44] to in the proposition to be submitted to said qualified electors of said Goleta County Water District.

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 1, a special election was held in said Goleta County Water District, at which there was submitted to the qualified electors of said District the proposition set forth in Paragraph VI of this Third Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 1.

IX

That on the 28th day of November, 1949, being the first Monday after said special election, the Board of Directors of Goleta County Water District met at a duly and regularly called, noticed and held special meeting of said Board, duly and regularly held on said day at the aforesaid usual

and regular place of meeting of said Board, all members of said Board being present, did duly and regularly meet as a canvassing board, and all absentee ballots not being yet received, and all said members present voting therefor, did duly and regularly adjourn said meeting as a canvassing board to Tuesday, November 29, 1949, at the aforesaid usual and regular place of meeting of said Board. At said last-mentioned time and place, pursuant to said order of [fol. 45] adjournment, said Board of Directors, all members being present, did duly and regularly meet as such canvassing board, and all members present voting therefor, did duly and regularly canvass the returns of said election and did duly and regularly make and enter in the records of said Board its finding and statement that the whole number of votes cast in said Goleta County Water District at said election was 1,774, and that of the total number of votes so cast, 1,642 votes were cast for said proposition and 132 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said Goleta County Water District, that said proposed ordinance was duly enacted by the electors of said Goleta County Water District and the execution of said proposed contract was duly authorized by said electors of said Goleta County Water District.

Fourth Cause of Action

For a Further, Fourth and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the fofegoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the Defendants in this cause of action, in addition to those specified in Paragraph IV of said First Cause of [fol. 46] Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in: That certain contract dated September 12, 1949, by and between

the Santa Barbara County Water Agency and the Montecito County Water District, a county water district, entitled "Contract for the Furnishing of Water to Montecito County Water District", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the Montecito County Water District on December 8, 1949, or the proceedings of the Board of Directors of the Montecito County Water District or the proceedings of the Montecito County Water District, or the proceedings of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned contract or the validity of the provisions of said contract, or in the proceedings had for the organization of said Santa Barbara County Water Agency or said Montecito County Water District; and all persons or parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency, or any part thereof, or within said Montecito County Water District, or any part thereof; and all property within said Santa Barbara County Water Agency of said Montecito County Water District.

[fol. 47]

III

That continuously at all times herein mentioned the Montecito County Water District was and now is a county water district duly organized and existing under and by virtue of that certain Act of the Legislature of the State of California, known as the "County Water District Act", being Chapter 592 of the Statutes of the 40th Session of the California Legislature, approved June 10, 1913 (1913 California Statutes, Chapter 592) and acts amendatory thereof and supplementary thereto, which acts, since October 1, 1949, constitute Division 12 of the Water Code of California, which Division, since said latter date, is known as "The County Water District Law".

IV

That continuously at all times herein mentioned since January 3, 1949, Harry P. Drake, Arthur E. Ogilvy, John

A. Parma, Hewitt Reynolds and Laselle Thornburgh constituted and now are the whole of the Board of Directors of said Montecito County Water District; and that continuously at all times in this paragraph mentioned, Harry P. Drake and Martha G. Evans have been and now are, respectively, the President and Secretary of said Montecito County Water District.

V

That at all times herein mentioned the aforesaid President and Secretary of said District last mentioned were the proper officers of said Montecito County Water District [fol. 48] to execute and enter into the aforementioned contract, designated herein as Exhibit "G", for and on behalf of Montecito County Water District.

VI

That on September 26, 1949, the Board of Directors of said Montecito County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the aforesaid usual and regular place of meeting of said Board, four of the members of said Board being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance (being Ordinance No. 26) entitled:

"An Ordinance of the Board of Directors of Montecito County Water District Ordering and Calling a Special Election to Be Held in Said Montecito County Water District on Tuesday, the 22nd Day of November, 1949, for the Purpose of Submitting to the Qualified Electors of and in Said Montecito County Water District at Said Special Election an Ordinance for Enactment by Said Qualified Electors, Which Ordinance Shall Be Entitled:

'An Ordinance of Montecito County Water District Authorizing and Directing the Proper Officers of Montecito County Water District to Execute and Enter Into a Contract With the Santa Barbara [fol. 49] County Water Agency for the Furnishing

by the Santa Barbara County Water Agency to Said Montecito County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Montecito County Water District, for Which Said Montecito County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.'"

calling a special election to be held within said District last mentioned on November 22, 1949, for the purpose of submitting to the qualified electors in said District the following proposition:

"Shall the Ordinance Entitled: 'An Ordinance of Montecito County Water District Authorizing and Directing the Proper Officers of Montecito County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Montecito County Water District of a Water Supply From Cachuma Unit to and for the Use [fol. 50] and Benefit of Said Montecito County Water District, for Which Said Montecito County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.' Hereby Submitted to the Qualified Electors of Said Montecito County Water District for Voting Thereon by Said Qualified Voters Be Enacted by and for Said Montecito County Water District, Said Ordinance Containing Said Contract Being Set Forth in Full in Ordinance No. 26 Adopted by the Board of Directors of Montecito County Water District at Its Meeting Held the 26th Day of September, 1949"

VII

Notice of said special election was thereafter given in all respects for the time and in the manner prescribed by

the laws of the State of California in such cases made and provided and by said Ordinance No. 26, and said notices of election as published and posted contained and set forth a full, true and correct copy of the ordinance submitted to said qualified electors of said Montecito County Water District, and a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors; and the Secretary of said District did, within ten (10) days prior to said election, [fol. 51] mail to each registered voter in said District a sample ballot and polling place card in the form prescribed by law and said Ordinance No. 26, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors of said Montecito County Water District.

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 26, a special election was held in said Montecito County Water District, at which there was submitted to the qualified electors of said District the proposition set forth in Paragraph VI of this Fourth Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 26.

IX

That on the 28th day of November, 1949, being the first Monday after said special election, the Board of Directors of said Montecito County Water District, at a duly and regularly called, noticed and held special meeting of said Board, duly and regularly held on said day at the aforesaid usual and regular place of meeting of said Board, three of the five members of said Board being present, did duly meet as a canvassing board and all said members present voting therefor, did duly and regularly canvass the returns of said election and did duly and regularly [fol. 52] make and enter in the records of said Board its

finding and statement that the whole number of votes cast in said Montecito County Water District at said election was 1,490, and that of the total number of votes so cast, 1,294 votes were cast for said proposition and 196 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said Montecito County Water District, that said proposed ordinance was duly enacted by the electors of said Montecito County Water District and the execution of said proposed contract was duly authorized by said electors of said Montecito County Water District.

Fifth Cause of Action

For a Further, Fifth and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the foregoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the Defendants in this cause of action, in addition to those specified in Paragraph VI of said First Cause of Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in: That cer- [fol. 53] tain contract dated December 8, 1949, by and between the Santa Barbara County Water Agency and the Summerland County Water District, a county water district, entitled "Contract for the Furnishing of Water to Summerland County Water Agency", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the Summerland County Water District on December 8, 1949, or the proceedings of the Board of Directors of the Summerland County Water District or the proceedings of the Summerland County Water District, or the proceedings of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned con-

tract or the validity of the provisions of said contract, or in the proceedings had for the organization of said Santa Barbara County Water Agency or said Summerland County Water District; and all persons and parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency, or any part thereof, or within said Summerland County Water District, or any part thereof; and all property within said Santa Barbara County Water Agency and said Summerland County Water District.

III

That continuously at all times herein mentioned the Summerland County Water District was and now is a county [fol. 54] water district duly organized and existing under and by virtue of that certain Act of the Legislature of the State of California, known as the "County Water District Act", being Chapter 592 of the Statutes of the 40th Session of the California Legislature, approved June 10, 1913 (1913 California Statutes, Chapter 592) and acts amendatory thereof and supplementary thereto, which acts, since October 1, 1949, constitute Division 12 of the Water Code of California, which Division, since said latter date, is known as "The County Water District Law".

IV

That continuously at all times herein mentioned since January 3, 1949, Ralph C. Bromwell, Harold A. Irwin, Cecil E. Lambert, Ernest A. McCurry and G. Blanchard Tucker constituted and now are the whole of the Board of Directors of said Summerland County Water District; and that continuously at all times in this paragraph mentioned, Cecil E. Lambert and W. M. Kirkwood have been and now are, respectively, the President and Secretary of said Summerland County Water District.

V

That at all times herein mentioned the aforesaid President and Secretary of said District last mentioned were the

proper officers of said Summerland County Water District to execute and enter into the aforementioned contract, designated herein as Exhibit "H", for and on behalf of [fol. 55] Summerland County Water District.

VI

That on September 26, 1949, the Board of Directors of said Summerland County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at McCurry's Chevron Gasoline Station in said District, four of the five members of said Board being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance (being Ordinance No. 1) entitled:

> "An Ordinance of the Board of Directors of Summerland County Water District ordering and calling a special election to be held in said Summerland County Water District on November 22nd, 1949, for the purpose of submitting to the qualified electors of and in said Summerland County Water District at said special election an ordinance for enactment by said qualified electors, which ordinance shall be entitled:
>
> 'An ordinance of Summerland County Water District authorizing the proper officers of Summerland County Water District to execute and enter into a contract with the Santa Barbara County Water Agency for the furnishing by the Santa Bar- [fol. 56] bara County Water Agency to said Summerland County Water District of a Water supply from Cachuma unit to and for the use and benefit of said Summerland County Water District, for which said Summerland County Water District will make payment to the Santa Barbara County Water Agency or to the United States upon the bases, at the rates and pursuant to and under the terms and conditions of the aforementioned contract.'"

calling a special election to be held within said District last mentioned on November 22, 1949, for the purpose of

submitting to the qualified electors in said District the following proposition:

"Shall the ordinance entitled:

'An ordinance of Summerland County Water District authorizing and directing the proper officers of Summerland County water District to execute and enter into a contract with the Santa Barbara County Water Agency for the furnishing by the Santa Barbara County Water Agency to said Summerland County Water District of a water supply from Cachuma unit to and for the use and benefit of said Summerland County Water District, for which said Summerland County Water District will make payment to the Santa [fol. 57] Barbara County Water Agency or to the United States, upon the bases, at the rates and pursuant to and under the terms and conditions of the aforementioned contract.'

Hereby submitted to the qualified electors of said Summerland County Water District for voting thereon by said qualified electors be enacted by and for said Summerland County Water District, said ordinance containing said contract being set forth in full in Ordinance No. 1 adopted by the Board of Directors of Summerland County Water District at its meeting held the 26th day of September, 1949."

VII

Notice of said special election was thereafter given in all respects for the time and in the manner prescribed by the laws of the State of California in such cases made and provided and by said Ordinance No. 1, and the Secretary of said District did, within ten (10) days prior to said election, mail to each registered voter in said District, a sample ballot and polling place card in the form prescribed by law and said ordinance, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors of said Summerland County Water District.

[fol. 58]

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 1, a special election was held in said Summerland County Water District, at which there was submitted to the qualified electors of the said District the proposition set forth in Paragraph VI of this Fifth Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 1.

IX

That on the 28th day of November, 1949, being the first Monday after said special election, the Board of Directors of said Summerland County Water District, at a duly and regularly called, noticed and held special meeting of said Board, duly and regularly held on said day at the aforesaid usual and regular place of meeting of said Board, three members of said Board being present, did duly and regularly meet as a canvassing board and all said members present voting therefor, did duly and regularly canvass the returns of said election and did duly and regularly make and enter in the records of said Board its finding and statement that the whole number of votes cast in said Summerland County Water District at said election was 177, and that of the total number of votes so cast, 146 votes were cast for said proposition and 31 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said Summer-

[fol. 59] land County Water District, that said proposed ordinance was duly enacted by the electors of said Summerland County Water District and the execution of said proposed contract was duly authorized by said electors of said Summerland County Water District.

notice of the exercise of such option for any year shall be furnished to the United States by the Agency on or before March 1 of the preceding year.

(c) While the Cachuma Unit has been designed and this [fol. 83] contract has been executed to serve the present and future reasonable beneficial needs and uses of the member units, there may be temporarily available at times, for reasons beyond the control of the contracting parties, quantities of water in excess of the amounts necessary for the United States to meet its obligations under this contract. Each year in which there is such surplus water available from Cachuma Unit, as determined by the contracting officer, the United States shall offer, at rates not to exceed those specified in Article 13 hereof, such water to the Agency for furnishing to member units, including Santa Ynez. The Agency may purchase during any such year all or part of such water: *Provided*, That in the event the Agency does not indicate in writing its desire to accept and pay for such surplus water for a member unit within sixty (60) days after receiving written notice from the United States of its availability, the Agency's right to purchase such water during the respective year shall terminate: *Provided, further*, That in the event the United States in any year sells or furnishes any such surplus water to others than a member unit, such water will not be sold at a rate which is less than that offered to the Agency. The contract between the United States and such other party shall expressly provide that the Agency and the member units shall have a prior right to such water in the event of a shortage and that the right of further service to such other party [fol. 84] shall be subject to the present and future needs of the member units for quantities of water in excess of those stipulated herein. Each such contract between the United States and party other than the Agency and a member unit shall be for a term of no longer than one year. Revenues derived by the United States in excess of the costs of operation and maintenance from the sale of all such surplus water shall be credited to the construction cost of the Cachuma Unit.

TIME FOR DELIVERY OF WATER

12. (a) On or before March 15, preceding each year during the interim period the contracting officer shall notify the Agency in writing of his estimate of the quantity of water which will be available from the Cachuma Unit during the ensuing year, which estimate may be revised from time to time by the contracting officer during such year.

(b) Except as provided in subdivision (c) of this article, the Agency shall submit in writing to the contracting officer on or before March 15 of each year during the term of this contract a schedule, subject to the provisions of Article 11 hereof and in form satisfactory to the contracting officer, indicating the desired times and quantities for the delivery of water to each member unit pursuant to said Article 11 during the following year. The United States shall, within the provisions hereof, make all reasonable [fol. 85] effort to deliver said water in accordance with said schedule, or any revision thereof submitted by the Agency within a reasonable time before the desired change, if any, of time for delivery. If in any year during the interim period the contracting officer revises his estimate of the quantity of water which will be available from the Cachuma Unit during such year, he shall so inform the Agency in writing, and the Agency within a reasonable time thereafter may revise its schedule to avail member units of any increased supply of water or to conform with any decreased supply of water.

(c) The contracting officer, within a reasonable time after he is able to do so, shall notify the Agency in writing of his estimate of the quantity of water which will be available from the Cachuma Unit during the portion of the interim period beginning with the initial delivery date and ending on the following May 15 and the Agency, within a reasonable time after receipt by it of such notice, shall submit a schedule indicating the desired times and quantities for the delivery of water for such portion of the interim period.

RATE AND METHOD OF PAYMENT FOR WATER

13. (a) Each year during the term of this contract the contracting officer shall, on or before December 1, preceding each such year, notify the Agency in writing of the rates for water to be furnished by the United States to each member unit pursuant to this contract during such year. In no event shall the rates so announced by the contracting [fol. 86] officer for any water for any year during the term of this contract be in excess of ten dollars ($10) per acre-foot for irrigation water for Santa Ynez, twenty-five dollars ($25) per acre-foot for irrigation water for Goleta, Summerland, Montecito and Carpinteria, and thirty-five dollars ($35) per acre-foot for municipal water: *Provided*, That neither the rates for irrigation water nor municipal water shall include an interest component. In the event the contracting officer announces rates for any year which are less than the maximum rates herein provided for, the rates so announced shall be in the ratio of thirty-five dollars ($35) per acre-foot for municipal water, twenty-five dollars ($25) per acre-foot for irrigation water for Summerland, Carpinteria, Goleta and Montecito, and ten dollars ($10) per acre-foot for irrigation water for Santa Ynez.

(b) Notwithstanding any other provisions of this contract:

(i) The rate fixed pursuant to subdivision (a) of this article for municipal water shall be paid by the Agency to the United States for all water furnished by the United States pursuant to this contract to member units which is delivered to users within or used within boundaries of any incorporated city;

(ii) The rates for irrigation water for the respective member units, fixed as provided in subdivision (a) of this [fol. 87] article, shall be paid by the Agency for all water furnished to member units other than Santa Barbara: *Provided*, That whenever there shall exist within Goleta, Summerland, Montecito, Carpinteria, or Santa Ynez a municipal area or municipal areas as hereinafter defined, then, during the period that such municipal area or municipal areas exist within such member unit, the Agency shall pay

to the United States for the water furnished by the United States to such member unit upon the following basis:

A. The rate fixed for municipal water, as provided in subdivision (a) of this article, shall be paid by the Agency to the United States for that portion of the total quantity of water required to be furnished to the member unit by the United States during the respective year, pursuant to Article 11 hereof, which bears the same ratio to such total quantity of water required to be delivered, as aforesaid, to the respective member unit during such year as the aggregate acreage of municipal areas within such member unit bears to the total acreage of such member unit, and the remaining portion of the water furnished or to be furnished hereunder by the United States during such year shall be paid by the Agency at the rate fixed, as provided in subdivision (a) of this article, for irrigation water for such member unit.

[fol. 88] B. After receipt by the Agency of the notice furnished by the contracting officer pursuant to Article 12(c) hereof and before the intial delivery date, and not less than sixty (60) days prior to and not sooner than one hundred and eighty (180) days prior to each period, the Agency shall determine with respect to each member unit, except Santa Barbara, from the records of such member unit whether there exists within the member unit an area of not less than three hundred (300) contiguous acres of land in which there exists an average of more than one water consumer service connection per acre. If any such area or areas are found by the Agency to exist, each such area shall be designated by the Agency as a "municipal area" and shall be given a suitable name, which shall be chosen by the governing body of the member unit in which said municipal area is found to exist, and the Agency promptly will notify the United States thereof. No area within one municipal area shall be included within any other municipal area. Each municipal area so designated by the Agency prior to the initial delivery date shall for the purposes of this agreement be deemed to

be a municipal area during the interim period and each municipal area so designated by the Agency as herein provided during or after the interim period shall be [fol. 89] deemed a municipal area for the period next commencing after such determination, it being intended that after the interim period no such determination shall be effective for more than one period.

(c) The Agency will collect from each member unit or units for water required to be furnished by the United States to such member unit pursuant to Article 11 of this contract. Each year the Agency will pay to the United States in advance of the delivery of water to a member unit the amount due to the United States for the quantity of water to be delivered to the member unit during such year. Such payment shall be made by the Agency on or before May 15 or such other date, prior to the time for the commencement of delivery of water to the respective member unit of the respective year, as may be specified by the contracting officer in written notice to the Agency.

(d) In the event the Agency or any member unit fails or refuses to accept delivery of water available for delivery to such member unit pursuant to this contract, or in the event the Agency in any year during the first through the seventh periods fails to submit a schedule for delivery as provided in Article 12 of this contract, said failure or refusal shall not relieve the Agency of its obligation to pay for said water and the Agency agrees to collect from the [fol. 90] member unit or units and to make payment therefor to the United States in the same manner as if said water had been delivered to and accepted by the member unit or member units in accordance with this contract.

POINTS OF DELIVERY, MEASUREMENT, AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

14. (a) All water for Santa Ynez will be delivered to Santa Ynez at the lower end of the outlet from Cachuma Dam.

(b) All water for Goleta, Summerland, Montecito, Carpinteria and Santa Barbara will be delivered at South Coast

conduit at such points within the boundaries of the Agency as may be mutually agreed upon by the contracting officer and the Agency in writing: *Provided*, That in the event the United States shall have reached the construction of the portion of said conduit, which probably will embrace such points, and the location has not been so agreed upon, such points shall be established at locations as in the determination of the contracting officer will best serve the needs of the member units.

(c) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to subdivisions (a) and (b) of this article and with equipment installed, operated and maintained by the United States. Upon the request of the Agency or any member unit, the accuracy of such measurements [fol. 91] will be investigated by the contracting officer and any errors appearing therein adjusted.

(d) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water which has been delivered to member units hereunder by the United States nor for damage or claim of damage of any nature whatsoever for which there is legal responsibility, including, but not limited to, property damage, personal injury, or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water; *Provided*, That the United States reserves the right to all waste, seepage, and return flow water, except sewage water, derived from water furnished hereunder to the Agency and member units and which escapes or is discharged beyond the Agency's boundaries and nothing herein shall be construed as an abandonment or relinquishment by the United States of any such water, but this shall not be construed as claiming for the United States any right, as waste, seepage, or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the Agency's boundaries by the Agency or by any member unit or those claiming by, through or under the Agency or any member unit.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

15. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to [fol. 92] member units by the United States pursuant to this contract through and by means of the Cachuma Unit and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of drought, unavoidable causes, or errors in operation, except willful misconduct or gross negligence. In any year in which there may occur a shortage from any cause, the United States shall apportion the available water supply among the member units entitled, under existing and future contracts, to receive water from Cachuma Unit in accordance with conclusive determination of the contracting officer as follows:

(i) A determination shall be made of the total quantity of water from Cachuma Unit agreed to be furnished by the United States during the respective year under this contract to all member units, including the amount of water with respect to which the Agency has exercised its option pursuant to Article 11(b)(vi) for such year for Santa Ynez, the amount so determined being herein referred to as the contractual commitments.

(ii) A determination shall be made of the total quantity of water which is available to the United States from Cachuma Unit for meeting contractual commitments, the amount so determined being herein referred to as the available supply.

[fol. 93] (iii) The total quantity of water agreed to be furnished to each member unit during the respective year, under Article 11 hereof, shall be divided by the contractual commitments, the quotient thus obtained being herein referred to as the contractual entitlement.

(iv) The available supply shall be multiplied by the contractual entitlement of each member unit and the result shall be the quantity of water required to be delivered by the United States to the respective mem-

ber unit during such year, but in no event shall such quantity exceed the total quantity of water agreed to be furnished to such member unit and paid for by the Agency pursuant to Article 11 hereof.

In so far as determined by the contracting officer to be practicable, the United States will, in the event a shortage appears probable, notify the Agency of such determinations in advance of the irrigation season. In the event that in any year there is delivered to any member unit or units, by reason of any such shortage or apportionment, or any failure, discontinuance, or reduction of service as set forth in subdivisions (b) or (c) of this article, less than the quantity of water which any member unit otherwise would have been entitled to receive under the contract and for which payment has been made by the Agency to the United States, the amount of any such overpayment shall be applied first [fol. 94] to any accrued indebtedness arising out of this contract by the Agency to the United States for the respective member unit, and any amount of such overpayment then remaining shall, at the option of the Agency, be refunded or credited upon amounts to become due to the United States from the Agency under the provisions of this contract in the ensuing year for the respective member unit. To the extent of such deficiency arising from errors in operation, or drought or other unavoidable causes or any discontinuance or reduction of service as set forth in subdivision (c) of this article, such adjustment shall constitute the sole remedy of the Agency or any one having or claiming to have by, through, or under the Agency the right to the use of any of the water supply provided for herein.

(b) Notwithstanding any provision of this contract to the contrary, the United States shall not be obligated to furnish water to any member unit pursuant to this contract unless and until the construction by the United States of facilities to the extent required for the furnishing of the water to the respective member unit has been completed as conclusively determined by the contracting officer.

(c) The United States may temporarily discontinue or reduce the amount of water to be furnished to any member

unit or units as herein provided for the purposes of such maintenance, repair, or replacement and investigations and [fol. 95] inspections in connection therewith and preliminary thereto as may be necessary of any of the project facilities necessary for the furnishing of water to the member unit or any part thereof but so far as feasible the United States will give the Agency due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the United States will, upon the resumption of service, deliver, as nearly as may be feasible, the quantity of water which would have been furnished to the member unit or units in the absence of such contingency.

STORAGE OF WATER

16. To the extent that storage space is available therefor, the United States, upon the request of any member unit, shall withhold delivery of and store in Cachuma Reservoir for and on behalf of such member unit any water required to be furnished to the member unit by the United States pursuant to this contract: *Provided*, That in the event any water is so stored and it becomes necessary to release water from Cachuma Reservoir because of the lack of storage capacity or for the purposes of repair or maintenance, or in the event that water spills over Cachuma Dam, all water so released or spilled shall be deemed to be water stored by member units: *Provided, further*, That the quantity of water which seeps or evaporates from Cachuma Reservoir shall be determined by the contracting officer and from the [fol. 96] water stored by member units there shall be deducted an amount of water which bears the same ratio to the total amount of such loss as the amount of water stored by member units bears to the total amount of water in the Cachuma Reservoir above the invert of the mouth of Tecolote Tunnel. If two or more member units request the storage of water in Cachuma Reservoir pursuant to this article, the available storage space will be apportioned each year upon the basis of the amount of water each of such member units is entitled to receive pursuant to this contract during the year that such storage space is available,

and the release from storage of any such stored water because of the unavailability of storage space shall be upon the same proportional basis.

DISPOSITION OF WATER BY MEMBER UNITS

17. (a) Water furnished by the United States to any member unit may be delivered by such member unit to other member units without the consent of the United States: *Provided*, That if the selling member unit receives from the purchasing member unit a sum for such water which is in excess of the total amount paid or owing to the United States for such water plus the expense, if any, incurred by the selling member unit in handling such water, the Agency shall pay to the United States the amount of such excess, if any.

(b) Any water furnished by the United States pursuant to this contract to a member unit and utilized by another [fol. 97] member unit as municipal water shall be paid for by the Agency at the rate established pursuant to Article 13 for municipal water.

(c) If in any year a member unit sells water to another member unit pursuant to subdivision (a) of this article, any amounts coming due to the United States as a result thereof shall be paid by the Agency to the United States on or before June 15 of the succeeding year.

AGREED CHARGES FOR EACH MEMBER UNIT TO BE A GENERAL OBLIGATION OF SUCH MEMBER UNIT

18. The Agency shall collect from each member unit and pay to the United States the sums coming due as a result of the Agency's obligation to pay for water available for furnishing to the respective member unit pursuant to this contract notwithstanding the individual default in the payment to the member unit by individual water users of assessments, tolls, or other charges levied by or owing to the respective member unit and the Agency agrees to use all of the powers and resources available to it under the laws of the State of California and the Santa Barbara County Water Agency Act to collect the funds necessary for it to

meet its obligations to the United States under this contract. Contracts between the Agency and member units shall provide that obligations of the member unit arising out of or pursuant or incidental to this contract shall con-
[fol. 98] stitute a general obligation of such member unit and that the amounts so coming due shall constitute a general obligation of such member unit notwithstanding the individual default in the payment to the member unit by individual water users of assessments, tolls, or other charges levied by or owing to the member unit, and that the member unit agrees to use all of the powers and resources available to it under the laws of the State of California to collect the funds necessary to meet such obligations.

DEFAULTS

19. (a) Should the Agency and the member unit fail to make the payment due to the United States for water to be furnished to such member unit pursuant to this contract and the Agency and such member unit fail to levy the assessments, tolls, or other charges necessary to be levied in order for such member unit and the Agency to meet the Agency's obligation to the United States under this contract with respect to such member unit, or having levied, should the Agency and the member unit be prevented from collecting such assessments, tolls, or other charges by any judicial proceeding or otherwise fail to collect them, no tract of land within such member unit shall be entitled to receive water furnished by the United States pursuant to this contract to such member unit, except upon payment by the landowner of such assessment or toll charge.

[fol. 99] (b) No water shall be furnished to any member unit during any period in which the Agency is in arrears in the advance payment of charges accrued under this contract with respect to such member unit unless the member unit makes the necessary payment directly to the United States, in which event the Agency shall be relieved of its obligation to make such payment for such year.

(c) No water furnished by the United States to any member unit pursuant to this contract shall be furnished

by such member unit to lands or parties which are in arrears in the payment to such member unit of assessments, rates, tolls, or other charges levied or established by such member unit if such assessments, rates, tolls or other charges are necessary for the purpose of raising revenues to meet the payments then due to the United States from the Agency for the member unit for such water and each contract between the Agency and a member unit shall so provide.

(d) The United States may, at its option, terminate all rights of any member unit to be furnished water pursuant to this contract on sixty (60) days' written notice to the Agency upon the failure of the Agency for two or more successive or cumulative years to make any of the payments required in this contract to be made by the Agency to the United States upon behalf of such member unit at the times and in the manner provided if the Agency does not pay said [fol. 100] delinquent charges within such 60-day period; however, if the Agency or member unit is prevented by legal action from making such payments, the United States may not exercise its right of termination for any failure to make such payments when such failure is occasioned by such legal action, unless by the final judgment in such legal action this contract is rendered unenforceable or void. Said termination shall be effective on January 1 following the date on which such notice is given to the Agency. Upon the effective date of such termination all obligations of the United States and all rights of the Agency and the member unit with respect to such member unit, of any nature whatsoever arising under this contract, shall cease, but such termination shall not relieve the Agency of the obligation to make to the United States all such payments becoming due pursuant to this contract prior to the effective date of such termination. No waiver at any time by the United States of its rights with respect to default under any other matter arising in connection with this contract shall be deemed to be a waiver with respect to any subsequent default or matter.

LEVY OF TAXES AND ASSESSMENTS—
FIXING OF RATES AND TOLLS

20. (a) Contracts between the Agency and member units involving water made available pursuant to this contract shall provide that each member unit shall cause to be levied and collected all necessary taxes and assessments and will [fol. 101] use all of the authority and resources of the member unit to meet its obligations thereunder, to make in full all payments to be made pursuant to such contract on or before the date such payments become due and to meet its other obligations under such contract.

(b) The Agency shall use all powers and resources available to it under the Santa Barbara County Water Agency Act, including the taxing power of the Agency or the power to levy special assessments to collect and pay to the United States and make payments promptly on the due dates thereof of all amounts which the Agency by the provisions of this contract shall be obligated to pay to the United States.

PENALTY UPON DELINQUENCY IN PAYMENT.

21. Upon each charge to be paid by the Agency to the United States pursuant to this contract which shall remain unpaid after the same shall have become due and payable there shall be imposed a penalty of one-half (½) of one (1) percent per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and the Agency hereby agrees to pay said penalty.

DISTRICT TO KEEP BOOKS AND RECORDS
AND REPORT CROP AND OTHER DATA

22. The Agency shall require each member unit to establish and maintain account and other books and records, adequate to enable the Agency to furnish to the Bureau of [fol. 102] Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the Secretary, of information pertaining to (a) accounts and financial transactions of the member unit, to the extent that

such information pertains to this contract and operations thereunder, and (b) crops raised and agricultural or livestock products produced on the land within the member unit, a report thereon for the preceding period of twelve (12) calendar months to be furnished to the Secretary annually on or before December 31, or such other date or dates as may be fixed by the Secretary.

INSPECTION OF BOOKS AND RECORDS

23. Subject to applicable Federal laws and regulations, the proper officers or agents of the Agency and each member unit or either of them shall have full and free access at all reasonable times to the project account books and official records of the Bureau of Reclamation, in so far as the same pertain to the matters and things provided for in this contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the United States shall have similar rights in respect to the account books and records of the Agency and each member unit.

CHANGES IN ORGANIZATION OF MEMBER UNITS

24. Contracts between the Agency and member units shall provide that while this contract is in effect no change [fol. 103] will be made in any member unit, except Santa Barbara, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another political subdivision of the State, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

LANDS NOT TO RECEIVE WATER UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

25. (a) No water made available to a member unit pursuant to this contract shall be furnished to any excess land as defined in Article 27 hereof unless the owners thereof shall have executed a valid recordable contract in form prescribed by the United States agreeing to the provisions of Articles 25, 26, and 27 of this contract; agreeing to the appraisal provided for in Article 26 hereof and that such appraisal shall be made on the basis of the actual bona fide

value of such land at the date of the appraisal without reference to the construction of the Cachuma Unit, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess land shall carry the right to receive water made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer and upon proof of fraudulent representation as to the true consideration involved [fol. 104] in such sale the United States may instruct the member unit by written notice to refuse to deliver any water subject to this contract to the land involved in such fraudulent sale and the member unit thereafter shall not deliver said water to such land.

(b) If project water furnished by the United States to a member unit pursuant to this contract reaches the underground strata of excess land owned by a large land owner who has not executed a recordable contract and the large land owner pumps such project water from the underground, the member unit will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water to nonexcess land or to excess land with respect to which a recordable contract has been executed.

VALUATION AND SALE OF EXCESS LANDS

26. (a) The value of the excess irrigable land within each member unit, held in private ownership of a large land owner as defined in the next succeeding article hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the Agency and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the [fol. 105] Agency are unable to agree upon the appointment of the third, the presiding justice of Division Three of the

Second District Court of Appeal of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such land on account of the existing or prospective possibility of securing water from the project.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the first two appraisals shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large land owner may be appraised in like manner.

(e) Excess irrigable lands sold by a large land owner within any member unit shall not carry the right to receive water made available hereunder for such land and the Agency shall require each member unit to agree to refuse to deliver or permit the delivery of such water to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the Agency.

[fol. 106] (f) The Agency agrees to take all reasonable steps requested by the contracting officer to ascertain the occurrence and conditions of all sales of irrigable land of large land owners in each member unit and annually to inform the United States concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the Agency and in the office of each member unit and like copies shall be kept in such principal office of the Bureau of Reclamation as may be established hereafter in connection with the project and shall be made available for examination during the usual office hours by all persons who may be interested therein.

Sixth Cause of Action

For a Further, Sixth and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the foregoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the defendants in this cause of action, in addition to those specified in Paragraph VI of said First Cause of Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in: That certain contract dated September 12, 1949, by and between the Santa Barbara County Water Agency and the City of Santa Barbara, a municipal corporation, entitled "Contract for the Furnishing of Water to the City of Santa Barbara", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the City of Santa Barbara on November 29, 1949, or the proceedings of the Council of the City of Santa Barbara or the proceedings of the City of Santa Barbara, or the proceedings [fol. 60] of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned contract or the validity of the provisions of said contract, or the proceedings had for the organization of said Santa Barbara County Water Agency or said City of Santa Barbara; and all persons and parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency, or any part thereof, or within the said City of Santa Barbara, or any part thereof; and all property within said Santa Barbara County Water Agency and said City of Santa Barbara.

III

That continuously at all times herein mentioned the City of Santa Barbara was and now is a municipal corporation duly organized and existing under and by virtue of the laws of the State of California.

IV

That continuously at all times herein mentioned since July 1, 1949, Floyd O. Bohnett, Bert A. Davis, Edith J. Hancock, W. Donald MacGillivray, Percy C. Heckendorf and Stewart S. Maitland constituted and now are the whole of the Council of said City of Santa Barbara, and said Floyd O. Bohnett, also known as F. O. Bohnett, Stewart S. Maitland and W. Donald MacGillivray, also known as W. D. [fol. 61] MacGillivray, constituted and now are the whole of the Finance Committee of the Council of said City; and that continuously at all times in this paragraph mentioned, Norris Montgomery, Faye Griffen and Henry T. Bailey have been and now are, respectively, the Mayor, Clerk and City Attorney of said City of Santa Barbara.

V

That at all times herein mentioned the aforesaid Mayor, Clerk, City Attorney and Finance Committee of the Council of said City were the proper officers of said City of Santa Barbara to execute and enter into the aforementioned contract, designated herein as Exhibit "D", for and on behalf of said City of Santa Barbara.

VI

That on October 6, 1949, the Council of said City of Santa Barbara, at a duly and regularly called, noticed and held regular meeting of said Council on said day, at the aforesaid usual and regular meeting place of said Board, all six members of said Council being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance, which on said day was approved by said Mayor (being Ordinance No. 2253), entitled:

"An ordinance of the City of Santa Barbara, in California, ordering and calling a special municipal election to be held in said City, on Tuesday, the 22nd day of November, 1949, for the purpose of submitting to [fol. 62] the qualified electors of and in said City at said election ordered and called for said Tuesday, the 22nd day of November, 1949, a proposition for the enactment by 'direct legislation' of a proposed new ordinance entitled:

'An ordinance of the City of Santa Barbara, California, approving and entering into a contract between the Santa Barbara County Water Agency, established by Chapter 1501 of the 1945 Statutes of California, as amended, and the City of Santa Barbara, a municipal corporation of the State of California duly organized and existing under the laws thereof, for the furnishing by said Santa Barbara County Water Agency to said City of Santa Barbara, a water supply from Cachuma Unit to and for the use and benefit of said City of Santa Barbara, for which said City of Santa Barbara will make payment to said Santa Barbara County Water Agency or to the United States upon the bases, at the rates and pursuant to and under the terms and conditions of the aforementioned contract and authorizing and directing the officers of the City of Santa Barbara [fol. 63] to sign, countersign, execute, deliver and do all things necessary to enter into and consummate said contract, all in accordance to law and provisions hereof.'

Said proposition for such enactment of said proposed new ordinance being by this ordinance duly submitted without any petition therefor, by the legislative body of said City on said legislative body's own motion, to the people for their enactment by their voting thereon at said election, as allowed by law, all as required by law."

Calling a special election to be held within said City on November 22, 1949, for the purpose of submitting to the qualified electors in said City the following proposition:

"Shall the proposed ordinance entitled: 'An ordinance of the City of Santa Barbara, California, approving and entering into a contract between the Santa Barbara County Water Agency, established by Chapter 1501 of the 1945 Statutes of California, as amended, and the City of Santa Barbara, a municipal corporation of the State of California duly organized and existing under the laws thereof, for the furnishing by said Santa Barbara County Water Agency to said [fol. 64] City of Santa Barbara, a water supply from Cachuma Unit to and for the use and benefit of said City of Santa Barbara, for which said City of Santa Barbara will make payment to said Santa Barbara County Water Agency or to the United States upon the bases, at the rates and pursuant to and under the terms and conditions of the aforementioned contract and authorizing and directing the officers of the City of Santa Barbara to sign, countersign, execute, deliver and do all things necessary to enter into and consummate said contract, all in accordance to law and the provisions hereof.'

Hereby submitted to the electors of said City for voting thereon by said electors by way of direct legislation, be enacted by and for said City of Santa Barbara as a direct legislation measure voted upon and adopted by the people, said proposed ordinance being set forth in full in Resolution No. 2064 adopted by the Council of the City of Santa Barbara at its regular meeting held September 15th, 1949, at 2:00 P.M."

VII

Notice of said special election was thereafter given in [fol. 65] all respects for the time and in the manner prescribed by the laws of the State of California in such cases made and provided and by said Ordinance No. 2253, and said notices of election as published and posted contained and set forth a full, true and correct copy of the ordinance submitted to said qualified electors of said City of Santa Barbara, and a full, true and correct copy of said last-mentioned contract referred to in the proposition to be

submitted to said qualified electors; and the Clerk of said City did, within ten (10) days prior to said election, mail to each registered voter in said City, a sample ballot and polling place card in the form prescribed by law, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors of said City of Santa Barbara.

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 2253, a special election was held in said City of Santa Barbara, at which there was submitted to the qualified electors of the said City the proposition set forth in Paragraph VI of this Sixth Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 2253.

[fol. 66] IX

That on the 29th day of November, 1949, being the first Tuesday after said special election, the Council of said City of Santa Barbara, at a duly and regularly called, noticed and held special meeting of said Council, duly and regularly held on said day at the aforesaid usual and regular place of meeting of said Council, five of the six members of said Council being present, did duly and regularly meet as a canvassing board and all said members present voting therefor, did duly and regularly canvass the returns of said election and did duly and regularly make and enter in the records of said Council its finding and statement that the whole number of votes cast in said City of Santa Barbara at said election was 15,154, and that of the total number of votes so cast, 11,405 votes were cast for said proposition and 3,680 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said City of Santa Barbara. That thereby said proposed ordinance was duly enacted by the electors of said City of Santa Barbara and the said

proposed contract was duly approved and entered into by said City, and said electors of said City authorized and directed the officers of the said City to sign, countersign, execute and deliver and do all things necessary to enter into and consummate said contract in accordance to law and the provisions of said initiative ordinance.

Wherefore, Plaintiff prays that this Court, after due [fol. 67] notice and hearing, determine, adjudge and declare that:

1. That certain contract hereinbefore referred to, entitled "Contract for the Furnishing of Water to Member Units of Santa Barbara County Water Agency", dated September 12, 1949, and executed by and between the United States of America and the Santa Barbara County Water Agency is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of the Santa Barbara County Water Agency to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract have been taken, had and performed in the manner required by law and that said contract is valid and legally binding upon, against and in favor of said Santa Barbara County Water Agency, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract is valid and is a valid and legal obligation of said Agency and that said Board of Directors of said Agency and said Agency had authority to enter into such contract.

2. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Carpinteria County Water District", dated September 12, 1949, and executed by and between said Agency and the Carpinteria County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Carpinteria County Water District to make, enter into and [fol. 68] carry out, and that all proceedings leading up to and including the execution of said contract last-mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is

valid and legally binding upon, against and in favor of said Agency and said Carpinteria County Water District, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last-mentioned is valid and is a valid and legal obligation of said Agency and said Carpinteria County Water District and that said Board of Directors of said Agency and said Agency and said Board of Directors of said Carpinteria County Water District and said Carpinteria County Water District had authority to enter into said contract.

3. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Goleta County Water District", dated September 12, 1949, and executed by and between said Agency and the Goleta County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Goleta County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Goleta [fol. 69] County Water District, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last mentioned is valid and is a valid and legal obligation of said Agency and said Goleta County Water District and that said Board of Directors of said Agency and said Agency and said Board of Directors of said Goleta County Water District and said Goleta County Water District had authority to enter into said contract.

4. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Montecito County Water District", dated September 12, 1949, and executed by and between said Agency and the Montecito County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Montecito

and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is valid and legally binding upon, against and in favor of said Agency and said Montecito County Water District, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last-mentioned is valid and is a valid and legal obligation of said Agency and said Montecito County Water District and that said Board of Directors of said Agency and said Agency and said Board of Direc- [fol. 70] tors of said Montecito County Water District and said Montecito County Water District had authority to enter into said contract.

5. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Summerland County Water District", dated December 8, 1949, and executed by and between said Agency and the Summerland County Water District is, and that each and every of the terms and provisions thereof are lawful and valid and within the lawful power of said Agency and said Summerland County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last-mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is valid and legally binding upon, against and in favor of said Agency and said Summerland County Water District, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last-mentioned is valid and is a valid and legal obligation of said Agency and said Summerland County Water District and that said Board of Directors of said Agency and said Agency and said Board of Directors of said Summerland County Water District and said Summerland County Water District had authority to enter into said contract.

6. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to City of Santa Barbara", dated September 12, 1949, and executed by [fol. 71] and between said Agency and the City of Santa

Barbara is, and that each and every of the terms and provisions thereof are lawful and valid and within the lawful power of said Agency and said City of Santa Barbara to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last-mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is valid and legally binding upon, against and in favor of said Agency and said City of Santa Barbara, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last-mentioned is valid and is a valid and legal obligation of said Agency and said City of Santa Barbara and that said Board of Directors of said Agency and said Agency and said Council of said City of Santa Barbara and said City of Santa Barbara had authority to enter into said contract.

7. For such other and further relief as may be meet and just in the premises.

Dated: At Santa Barbara, California, this 6th day of February, 1950.

David S. Licker, District Attorney of the County of Santa Barbara and Ex-Officio Attorney for said Agency, and Lawrence M. Parma, Deputy District Attorney, By Lawrence M. Parma, Attorneys for Plaintiff.

[fol. 72] *Duly sworn to by T. A. Twitchell, jurat omitted in printing.*

[fol. 73] EXHIBIT "A" TO COMPLAINT, ETC.

Contract Symbol & No.
175r-1802

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Santa Barbara County Project, California

CONTRACT FOR THE FURNISHING OF WATER TO MEMBER UNITS OF SANTA BARBARA COUNTY WATER AGENCY

Article	*Title*
1	Preamble
2-8	Explanatory Recitals
9	Definitions
10	Term of Contract
11	Water to be Furnished by United States
12	Time for Delivery of Water
13	Rate and Method of Payment for Water
14	Points of Delivery, Measurement, and Responsibility for Distribution of Water
15	United States Not Liable for Water Shortage
16	Storage of Water
17	Disposition of Water by Member Units
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19	Defaults
20	Levy of Taxes and Assessments—Fixing of Rates and Tolls
21	Penalty upon Delinquency in Payment
22	District to Keep Books and Records and Report Crop and Other Data
[fol. 74] *Article* (Cont'd.)	*Title*
23	Inspection of Books and Records
24	Changes in Organization of Member Units
25	Lands Not to Receive Water Until Owners thereof Execute Certain Contracts
26	Valuation and Sale of Excess Lands

27 Excess Land
28 Amendment of Federal Reclamation Laws
29 Contracts Between Agency and Member Units
30 Existing Water Rights
31 Contingent upon Appropriation or Allotments of Funds
32 Officials Not to Benefit
33 Notices
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[fol. 75] Contract Symbol & No. 175r-1802

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Santa Barbara County Project

CONTRACT FOR THE FURNISHING OF WATER TO MEMBER UNITS OF SANTA BARBARA COUNTY WATER AGENCY

1. THIS CONTRACT, made this 12th day of September, 1949, in pursuance generally of the Act of Congress of June 17, 1902 (32 Stat. 388); and acts amendatory thereof or supplementary thereto, all collectively herein styled the Federal reclamation laws, between THE UNITED STATES OF AMERICA, herein styled the United States, and the SANTA BARBARA COUNTY WATER AGENCY, herein styled the Agency, a political subdivision of the State of California, duly organized, existing, and acting pursuant to the laws thereof, including but not restricted to the Santa Barbara County Water Agency Act, with its principal place of business in the City of Santa Barbara, State of California;

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the City of Santa Barbara, the Goleta County Water District, the Montecito County Water District, the Summerland County Water District, the Carpin-

teria County Water District, and the Santa Ynez River Water Conservation District are "Districts" lying within the Agency as defined by subdivision (f) of Section 2 of the Santa Barbara County Water Agency Act, and it is contemplated that said Districts will become with respect to [fol. 76] this contract "member units" of said Agency, as defined in and by the Santa Barbara County Water Agency Act; and

3. WHEREAS, the lands and inhabitants within said Agency and within each and all of said Districts are in critical need of additional water for municipal, domestic, and irrigation uses; and

4. WHEREAS, investigations of the present water supply indicate that irrigated and irrigable lands within the boundaries of the Agency and of said Districts are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation and certain areas require a new or supplemental supply of water for municipal and miscellaneous purposes for present and future needs, and that ground-water supplies are seriously depleted and in need of replenishment and that a supplemental water supply to meet these present and potential needs can be made available by and through the works to be constructed by the United States; and

5. WHEREAS, investigations of the stream flow in the Santa Ynez River and its tributaries and present and future requirements for beneficial uses indicate that there will be available, for furnishing for the use and benefit of said member units, a supplemental water supply from Cachuma Unit for irrigation, municipal, industrial, and domestic uses; and

6. WHEREAS, the United States proposes to construct the [fol. 77] Cachuma Unit of the Santa Barbara County Project, said unit to consist of Cachuma Dam and Reservoir, designed to have water storage capacity commensurate with the water supply requirements of this contract, Tecolote Tunnel, and the South Coast Conduit, for diversion, storage, carriage, and distribution to member units of waters of the Santa Ynez River and its tributaries and water devel-

oped in Tecolote Tunnel for irrigation, municipal, domestic, industrial, and other beneficial uses and purposes as authorized by means of a report by the Secretary of the Interior, House Document No. 587 (80th Congress, 2nd Session), the total estimated cost of the proposed construction at cost levels as of the date of said report being $28,610,000; and

7. WHEREAS, it has been determined to be infeasible to execute a repayment contract pursuant to sections 9(c)(1) and 9(d) of the Reclamation Project Act of 1939, this contract is being executed pursuant to sections 9(c)(2) and 9(e) of said act; and

8. WHEREAS, the Agency desires to contract pursuant to the Federal reclamation laws for the furnishing by the United States of a water supply from the Cachuma Unit for the use and benefit of its said member units for which the Agency will make payment to the United States upon the basis, at the rates, and pursuant to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby agreed by [fol. 78] the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "contracting officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Initial delivery date" shall mean the date on which water will be available for furnishing by the United States pursuant to subdivision (a) of Article 11 of this contract by means of the Cachuma Unit and which shall be announced in advance by the Secretary to the Agency in writing;

(c) "Year" shall mean the period from May 15 through May 14, both dates inclusive;

(d) "Municipal Water" shall mean water furnished or to be furnished by the United States (i) to or used by or in Santa Barbara, or (ii) to or used by or in any incorporated city, or (iii) to or used by or in any "municipal area" as said term "municipal area" is defined in Article 13 of this contract;

(e) "Irrigation water" shall mean water furnished or to be furnished to member units to be used or used for beneficial purposes other than those specified in subdivision (d) of this article;

(f) "Member unit" shall mean any district as defined in [fol. 79] and by the Santa Barbara County Water Agency Act which enters into a contract with the Agency for the payment for water to be furnished to such member unit by the United States pursuant to this contract;

(g) "Interim period" shall mean the period commencing with the initial delivery date and extending through May 14 of the fourth year after the year in which the initial delivery date occurs;

(h) "Period" shall mean each of the last seven consecutive five-year periods of the term of this contract, the first of which will commence on May 15 immediately following the close of the interim period;

(i) "Santa Barbara" shall mean the City of Santa Barbara;

(j) "Goleta" shall mean the Goleta County Water District;

(k) "Summerland" shall mean the Summerland County Water District;

(l) "Montecito" shall mean the Montecito County Water District;

(m) "Carpinteria" shall mean the Carpinteria County Water District;

(n) "Santa Ynez" shall mean the Santa Ynez River Water Conservation District;

(o) "Santa Barbara County Water Agency Act" shall [fol. 80] mean the Santa Barbara County Water Agency Act, passed by the California legislature and approved July 18, 1945, as now or hereafter amended.

TERM OF CONTRACT

10. This contract shall become effective upon its execution and shall remain in effect for a period of forty (40) years commencing with the year in which the initial delivery date occurs: *Provided*, That in the event the Congress of the United States during the term of the contract enacts legislation permitting the renewal or extension of this contract, the Agency may, at its option, extend or renew this contract in conformance with and subject to the terms of the then existing law.

WATER TO BE FURNISHED BY UNITED STATES

11. (a) To the extent that water and the facilities necessary for furnishing such water to member units are available therefor, as determined by the contracting officer, the United States shall furnish to member units each year during the interim period, and the Agency each year during such interim period shall collect from such member units and pay to the United States for such quantities of water as are specified in a schedule submitted by the Agency in accordance with Article 12 for each such year.

(b) Each year the United States shall furnish to, and the Agency shall collect from and pay to the United States for:

[fol. 81] (i) *Santa Barbara*

3,300 acre-feet of water during the first period.
4,500 acre-feet of water during the second period.
5,600 acre-feet of water during the third period.
6,800 acre-feet of water during the fourth period.
7,900 acre-feet of water during the fifth period.
9,100 acre-feet of water during the sixth period.
10,300 acre-feet of water during the seventh period.

(ii) *Goleta*

3,300 acre-feet of water during the first period.
4,700 acre-feet of water during the second period.
6,100 acre-feet of water during the third period.
7,400 acre-feet of water during the fourth period.
8,800 acre-feet of water during the fifth period.
10,200 acre-feet of water during the sixth period.
11,600 acre-feet of water during the seventh period.

(iii) *Summerland*

100 acre-feet of water during the first period.
200 acre-feet of water during the second period.
300 acre-feet of water during the third period.
300 acre-feet of water during the fourth period.
400 acre-feet of water during the fifth period.
400 acre-feet of water during the sixth period.
400 acre-feet of water during the seventh period.

(iv) *Montecito*

[fol. 82] 500 acre-feet of water during the first period.
1,000 acre-feet of water during the second period.
1,500 acre-feet of water during the third period.
1,900 acre-feet of water during the fourth period.
2,400 acre-feet of water during the fifth period.
2,800 acre-feet of water during the sixth period.
2,900 acre-feet of water during the seventh period.

(v) *Carpinteria*

1,000 acre-feet of water during the first period.
1,500 acre-feet of water during the second period.
2,000 acre-feet of water during the third period.
2,400 acre-feet of water during the fourth period.
2,900 acre-feet of water during the fifth period.
3,300 acre-feet of water during the sixth period.
3,500 acre-feet of water during the seventh period.

(vi) *Santa Ynez*

500 acre-feet of water during the first through the seventh period: *Provided*, That the United States shall furnish to Santa Ynez each year, at the annual option of the Agency, additional quantities of water but not in excess of 2,800 acre-feet of such additional water per year. Written

EXCESS LAND

27. (a) As used herein the term "excess land" means that part of the irrigable land within a member unit in excess of 160 acres held in the private beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife as tenants in common, by the entirety, as joint tenants, or as community property; the term "large land owner" means an owner of excess land and the term "nonexcess land" means all irrigable land within a member unit which is not excess land as defined herein.

(b) Each large land owner as a further condition prece- [fol. 107] dent to the right to receive water for any of his excess land shall:

(i) Before any water is furnished a member unit to or for his excess land within such member unit, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions of Articles 25, 26, and 27 of this contract and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and agreeing further that if said land is not so disposed of within a period of ten (10) years after the date of the execution of said recordable contract the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large land owner; and the Agency shall require each member unit to agree that it will refuse to deliver water to any large land owner other than for his nonexcess land within the member unit until such owner meets the conditions precedent therein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large land owner to designate his irrigable land within the member unit which he desires to designate as nonexcess land, file in the office of the member unit, in duplicate, one [fol. 108] copy thereof to be furnished by the member

unit to the Bureau of Reclamation, his written designation and description of land so selected to be nonexcess land and upon failure to do so the member unit shall make such designation and mail a notice thereof to such large owner, and in the event the member unit fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer who will mail a notice thereof to the member unit and the large land owner. The large land owner shall become bound by any such action on the part of the member unit or the contracting officer and the member unit will deliver water only to the land within its boundaries so designated to be nonexcess land.

AMENDMENT OF FEDERAL RECLAMATION LAWS

28. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, Articles 25, 26 and 27 of this contract will no longer be of any force or effect, and in the event that the Congress amends the excess-land provisions or any other provisions of the Federal reclamation laws the United States agrees, at the option of the Agency, to amend by language to be mutually agreed upon by the United States and the Agency the appropriate articles of this contract, all [fol. 109] consistently with the provisions of such repeal or amendment.

CONTRACTS BETWEEN AGENCY AND MEMBER UNITS

29. (a) Each contract between the Agency and a member unit involving water to be furnished by the United States pursuant to this contract shall be subject to the terms of this contract and shall so provide. Each such contract providing for the furnishing of water for irrigation uses shall also include Articles 25, 26, 27 and 28 of this contract with such modifications or revisions as are necessary in the opinion of the contracting officer and the Agency.

(b) Each contract between the Agency and a member unit, in so far as such contract pertains to water which may

be furnished by the United States, shall contain a provision whereby the member unit agrees to the provisions of this contract. In the event that within one year after the execution of this contract, there have not been executed contracts between the Agency and districts which in the aggregate will provide for the disposition of at least 8,100 acre-feet per year of the water to be made available pursuant hereto by the United States during the first period hereof, then this contract shall be of no force or effect. If this contract becomes effective but not all the proposed member units named in sections (i) to (n), both inclusive, of Article 9 hereof execute such contracts with the Agency, then any provision hereof relating to any such proposed member unit [fol. 110] not executing such an Agency contract shall be disregarded and shall be given no force or effect and shall not create any right or liability in favor of or against the United States, the Agency, any governmental unit, city, district, person, corporation or association whether a party hereto or not.

EXISTING WATER RIGHTS.

30. Subject to agreement or the power of the United States of eminent domain:

(a) The water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the laws of the State of California. The established water rights of any member unit, whether such rights are presently fully developed or not, are hereby recognized by the United States and the Agency, and shall be preserved notwithstanding the execution of this contract or of any provision of this contract to the contrary, or any operation or use hereunder.

(b) Neither Santa Ynez, Santa Barbara, nor Montecito shall be required to deliver or transfer to the United States, the Agency, the Cachuma Unit, or to any person or entity entitled to water therefrom any water

[fol. 111] or water rights to which said City or Districts are entitled under their or its established water rights.

(c) The United States and the Agency hereby recognize and agree not to take, restrict, impair, or interfere with any or all of said presently established rights to water for present use and future development based upon such rights.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

31. The expenditure of any money or the performance of any work or service by the United States herein provided for which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds or the failure of an allotment of funds shall not relieve the Agency from any obligations under this contract and no liability shall accrue to the United States in case such funds are not so appropriated or allotted: *Provided*, That in the event that water deliveries are halted or curtailed as a result of such failure to appropriate or allot funds, the obligation of the Agency to make payments pursuant to this contract shall be reduced to the extent of such halting or curtailment of service.

OFFICIALS NOT TO BENEFIT

32. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this [fol. 112] contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

NOTICES

33. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given when deposited in the United States Post Office, on the part of the United States in a franked envelope addressed to the Agency or to the member unit involved at its office and on the part of the Agency in a postage prepaid envelope ad-

dressed to the Bureau of Reclamation, Department of the Interior, Sacramento, California, or such other address as from time to time may be designated by the Secretary in a written notice to the Agency: *Provided*, however, That this article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT

34. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the Secretary. No sale or other disposal by any member unit for use outside of such member unit or another member unit of any water, or the right to the use [fol. 113] thereof, furnished to such member unit pursuant to this contract shall be valid.

ASSURANCES RELATING TO VALIDITY OF CONTRACT

35. Promptly after the execution and delivery of this contract the Agency shall file or cause to be filed and prosecute or cause to be prosecuted to a final decree, including any appeal therefrom, an action at law, or in equity or a special proceeding for the judicial examination, approval, and confirmation of the proceedings had for the organization of the Agency and the proceedings of the Board of Directors of the Agency and the proceedings of the Agency leading up to and including the making of this contract and the validity of the provisions hereof, and for the judicial examination, approval and confirmation of contracts made between the Agency and its member units in so far as the same may relate to water to be furnished under the provisions of this contract.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year first hereinabove written.

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY

/s/ John K. Bennett
Acting Regional Counsel

THE UNITED STATES OF AMERICA

By Richard L. Boke
Regional Director, Region 2,
Bureau of Reclamation,
United States Department of
the Interior.

SANTA BARBARA COUNTY WATER AGENCY

By T. A. Twitchell
Chairman, Board of Directors

Attest:

J. E. Lewis (Seal)
Clerk of said Agency

[fol. 130] EXHIBIT "D" TO COMPLAINT, ETC.

SANTA BARBARA COUNTY WATER AGENCY

CONTRACT FOR THE FURNISHING OF WATER TO THE CITY OF SANTA BARBARA

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[fol. 132]

SANTA BARBARA COUNTY WATER AGENCY

Contract for the Furnishing of Water to the City of Santa Barbara

1. This Contract, made this 12th day of September, 1949, at and in the County of Santa Barbara, State of California, between The Santa Barbara County Water Agency, herein styled "the Agency", established by Chapter 1501 of the 1945 Statutes of California, as amended, and the City of Santa Barbara, herein styled "Santa Barbara",

a municipal corporation of the State of California, duly organized and existing under the laws thereof,

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the City of Santa Barbara, the Carpinteria County Water District, the Goleta County Water District, the Montecito County Water District, the Summerland County Water District and the Santa Ynez River Water Conservation District are "Districts" lying within the Agency as defined by subdivision (f) of section 2 of the Santa Barbara County Water Agency Act, and it is contemplated that said Districts will become "member units" of the Agency, as defined in and by the Santa Barbara County Water Agency Act, with respect to that certain contract between the United States and the Agency bearing the [fol. 133] date of the 12th day of September, 1949, (which contract is hereinafter styled the "Master Contract"); a copy of which is attached hereto, marked Exhibit "A", and by reference made a part hereof; and

3. WHEREAS, the lands and inhabitants within the Agency and within each and all of said Districts, including Santa Barbara, are in critical need of additional water for municipal, domestic and irrigation uses; and

4. WHEREAS, investigations of the present water supply indicate that irrigated and irrigable lands within the boundaries of the Agency and of said Districts, including Santa Barbara, are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation and certain areas require a new or supplemental supply of water for municipal and miscellaneous purposes for present and future needs, and that ground water supplies are seriously depleted and in need of replenishment and that a supplemental water supply to meet these present and potential needs can be made available by and through the works to be constructed by the United States under said Master Contract; and

5. WHEREAS, investigations of the stream flow in the Santa Ynez River and its tributaries and present and future

requirements for beneficial uses indicate that there will be available, for furnishing for the use and benefit of said [fol. 134] member units, including Santa Barbara, a supplemental water supply from Cachuma Unit for irrigation, municipal, industrial and domestic uses; and

6. WHEREAS, the United States proposes to construct the Cachuma Unit of the Santa Barbara County Project, said unit to consist of Cachuma Dam and Reservoir, designed to have water storage capacity commensurate with the water supply requirements of the Master Contract, Tecolote Tunnel and the South Coast conduit, for diversion, storage, carriage and distribution to member units of waters of the Santa Ynez River and its tributaries and water developed in Tecolote Tunnel for irrigation, municipal, domestic, industrial and other beneficial uses and purposes as authorized by means of a report by the Secretary of the Interior, dated December 22, 1947, and approved and adopted January 7, 1948, (see House Document No. 587, 80th Congress, 2nd Session), the total estimated cost of the proposed construction at cost levels as of the date of said report being $28,610,000; and

7. WHEREAS, the United States and the Agency, pursuant to the provisions, among others, of sections 9(c)(2) and 9(e) of the Reclamation Project Act of 1939, have executed the Master Contract whereby the Agency will be furnished by the United States a water supply from the Cachuma Unit for the use and benefit of the Agency's said member units, including Santa Barbara; and

[fol. 135] 8. WHEREAS, Santa Barbara desires to contract with the Agency for the furnishing by the Agency of a water supply from the Cachuma Unit to and for the use and benefit of Santa Barbara, for which Santa Barbara will make payment to the Agency or to the United States upon the basis, at the rates and pursuant to the conditions in this contract hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby agreed by the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Initial delivery date" shall mean the date on which water will be available for furnishing by the United States pursuant to subdivision (a) of Article 11 of the Master Contract by means of the Cachuma Unit and which shall be announced in advance by the Secretary to the Agency in writing;

(c) "Year" shall mean the period from May 15 through May 14, both dates inclusive;

[fol. 136] (d) "Municipal water" shall mean water furnished or to be furnished from Cachuma Unit (i) to or used by or in Santa Barbara, or (ii) to or used by or in any incorporated city, or (iii) to or used by or in any "municipal area" as said term "municipal area" is defined in any contract between the Agency and any member unit;

(e) "Irrigation water" shall mean water furnished or to be furnished from Cachuma Unit to member units to be used or used for beneficial purposes other than those specified in subdivision (d) of this Article;

(f) "Member unit" shall mean any district as defined in and by the Santa Barbara County Water Agency Act which enters into a contract with the Agency for the payment for water to be furnished to such member unit by the Agency or the United States pursuant to the Master Contract;

(g) "Interim period" shall mean the period commencing with the initial delivery date and extending through May 14 of the fourth year after the year in which the initial delivery date occurs;

(h) "Period" shall mean each of the last seven consecutive five-year periods of the term of this contract, the first of which will commence on May 15 immediately following the close of the interim period, and [fol. 137] which periods shall be identical with the periods defined in the Master Contract;

(i) "Santa Barbara" shall mean the City of Santa Barbara;

(j) "Goleta" shall mean the Goleta County Water District;

(k) "Summerland" shall mean the Summerland County Water District;

(l) "Montecito" shall mean the Montecito County Water District;

(m) "Carpinteria" shall mean the Carpinteria County Water District;

(n) "Santa Ynez" shall mean the Santa Ynez River Water Conservation District;

(o) "Santa Barbara County Water Agency Act" shall mean the Santa Barbara County Water Agency Act, passed by the California Legislature and approved July 18, 1945, as now or hereafter amended;

(p) Whenever hereunder the Agency is to furnish or deliver water to Santa Barbara or other member units, the delivery or furnishing of such water to Santa Barbara, or other member units, from the Cachuma Unit by the United States shall be construed as furnishing or delivery by the Agency.

[fol. 138] TERM OF CONTRACT

10. This contract shall become effective upon its execution and, subject to the limitations of Article 28(b) hereof, shall remain in effect for a period of forty (40) years commencing with the year in which the initial delivery date occurs: *Provided*, That in the event the Congress of the United States during the term of the Master Contract

enacts legislation permitting the renewal or extension of the Master Contract, and the Agency, at its option, extends or renews the Master Contract in conformance with and subject to the terms of the then existing law, then Santa Barbara, at its option, may extend or renew this contract in conformance with and subject to the terms of the then existing law, and subject to the terms of the Master Contract as so extended or renewed: *Provided*, further, That whenever the Master Contract is terminated in the manner and for the cause or causes specified in the Master Contract this contract shall terminate.

WATER TO BE FURNISHED BY UNITED STATES AND AGENCY

11. (a) To the extent that water and the facilities necessary for furnishing such water to member units are available therefor, as determined by the contracting officer, the Agency shall furnish to Santa Barbara each year during the interim period, and Santa Barbara each year during such interim period shall pay to the Agency, which [fol. 139] in turn shall pay to the United States, for such quantities of water as are specified in a schedule submitted by Santa Barbara to the Agency in accordance with Article 12 for each such year.

(b) Each year the Agency shall furnish to, and Santa Barbara shall pay to the Agency for, which in turn shall pay to the United States for Santa Barbara:

3,300 acre-feet of water during the first period.
4,500 acre-feet of water during the second period.
5,600 acre-feet of water during the third period.
6,800 acre-feet of water during the fourth period.
7,900 acre-feet of water during the fifth period.
9,100 acre-feet of water during the sixth period.
10,300 acre-feet of water during the seventh period.

(c) While the Cachuma Unit has been designed to serve the present and future reasonable beneficial needs and uses of the member units, and while this contract has been executed to serve the present and future beneficial needs and uses of Santa Barbara, there may be temporarily avail-

able at times, for reasons beyond the control of the contracting parties hereto, quantities of water in excess of the amounts necessary for the Agency to meet its obligations under this and other member unit contracts. Each year in which there is such surplus water available from Cachuma Unit, as determined by the contracting officer, the Agency shall offer, at rates not to exceed those specified [fol. 140] in Article 13 hereof, such water to all member units, including Santa Barbara, and the Agency is prohibited from selling such water to any but a member unit. Santa Barbara may purchase during any such year all or part of such water, subject to the limitations of Article 11(d): *Provided*, That in the event Santa Barbara does not indicate to the Agency in writing its desire to accept and pay for such surplus water within fifty (50) days after receiving written notice from the United States or the Agency of its availability, Santa Barbara's right to purchase such water during the respective year shall terminate: *Provided*, further, That in the event the United States in any year sells or furnishes any such surplus water to others than a member unit, the Agency, in accordance with the Master Contract, shall take such measures as are necessary (i) to prevent such water from being sold by the United States at a rate which is less than that offered to the Agency for the benefit of its member units, (ii) to provide that the contract between the United States and such other party shall expressly provide that the Agency and the member units shall have a prior right to such water in the event of a shortage and that the right of further service to such other party shall be subject to the present and future needs of the member units for quantities of water in excess of those stipulated herein and in the Master Contract, (iii) to provide that each such contract between the United States and party other [fol. 141] than the Agency and a member unit shall be for a term of no longer than one year, and (iv) to provide that revenues derived by the United States in excess of the costs of operation and maintenance from the sale of all such surplus water, whether to a member unit or otherwise, shall be credited to the construction cost of the Cachuma Unit.

(d) In the event that member units desire to purchase more of the excess water specified in Article 11(c) than is available, Santa Barbara shall be entitled to purchase that portion of the available supplies as the amount of water specified for Santa Barbara by Article 11(b) of the Master Contract in that year from Cachuma Unit bears to the amount of water specified by said Article 11(b) of the Master Contract in that year for all member units desiring to purchase such excess water in that year from Cachuma Unit: *Provided*, That if any member unit has assigned to Santa Barbara any of such member unit's right to receive water specified in said Article 11(b) of the Master Contract, the right of Santa Barbara to purchase excess water shall be correspondingly increased.

TIME FOR DELIVERY OF WATER

12. (a) On or before March 15, preceding each year during the interim period the contracting officer will notify the Agency in writing of his estimate of the quantity of water which will be available from the Cachuma Unit during the ensuing year, which estimate may be revised [fol. 142] from time to time by the contracting officer during such year. Within seven (7) days after receipt of such notice, or any revision thereof, the Agency shall transmit a true copy thereof to Santa Barbara.

(b) Except as provided in subdivision (c) of this Article, Santa Barbara shall submit in writing to the Agency on or before March 10 of each year during the term of this contract a schedule, subject to the provisions of Article 11 hereof and in form satisfactory to the Agency and the contracting officer, indicating the desired times and quantities for the delivery of water to Santa Barbara pursuant to said Article 11 during the following year. The Agency shall, within the provisions hereof, make all reasonable effort to deliver said water in accordance with said schedule, or any revision thereof submitted by Santa Barbara within a reasonable time before the desired change, if any, of time for delivery. If in any year during the interim period the contracting officer notifies the Agency that he has revised his estimate of the quantity

of water which will be available from the Cachuma Unit during such year, the Agency, within seven (7) days of the receipt of such notice, shall transmit a true copy of such notice to Santa Barbara, and Santa Barbara, within a reasonable time thereafter, may revise its schedule to avail itself of any increased supply of water or to conform with any decreased supply of water.

[fol. 143] (c) Within seven (7) days after the Agency has received written notice from the contracting officer of his estimate of the quantity of water which will be available from the Cachuma Unit during the portion of the interim period beginning with the initial delivery date and ending on the following May 15, the Agency shall transmit a true copy of such notice to Santa Barbara. Santa Barbara, within a reasonable time after receipt by it of such notice, shall submit a schedule indicating the desired times and quantities for the delivery of water for such portion of the interim period.

RATE AND METHOD OF PAYMENT FOR WATER

13. (a) The rate or rates to be paid by Santa Barbara for water furnished hereunder, and which Santa Barbara hereby agrees to pay, shall be the rate or rates announced each year by the contracting officer in accordance with the provisions of Article 13(a) of the Master Contract for water to be furnished Santa Barbara during the subsequent year, (hereinafter called the "gross rate or gross rates"), less the discount, if any, hereinafter provided for, (hereinafter called "the discount"), which resultant rate to be paid by Santa Barbara shall be known as the "net rate or net rates". In no event shall either the gross or the net rates so established for any year during the term of this contract be in excess of Ten Dollars ($10.00) per acre-foot for irriga-[fol. 144] tion water for Santa Ynez nor Twenty-five Dollars ($25.00) per acre-foot for irrigation water for Montecito, Carpinteria, Goleta and Summerland, nor Thirty-five Dollars ($35.00) per acre-foot for municipal water: *Provided*, That neither the gross nor net rates for irrigation water nor municipal water shall include an interest component. In the event the contracting officer announces gross rates

for any year which are less than the maximum rates herein provided for, the gross rates so announced shall be in the ratio of Thirty-five Dollars ($35.00) per acre-foot for municipal water, Twenty-five Dollars ($25.00) per acre-foot for irrigation water for Summerland, Carpinteria, Goleta and Montecito, and Ten Dollars ($10.00) per acre-foot for irrigation water for Santa Ynez.

(b) Santa Barbara each year shall be entitled to a discount per acre-foot on the rates announced by the contracting officer for the water furnished to it under the provisions of Article 11(b) of this contract, computed as follows: The rate announced by the contracting officer for water for Santa Barbara for such year shall be multiplied by $100,000, and the figure thus obtained shall be divided by the total sum due the United States for all water specified in Article 11(b) of the Master Contract for such year, including any water for Santa Ynez for such year for which the option specified in (vi) of said Article is exercised. Santa Barbara [fol. 145] each year during the interim period shall be entitled to a discount per acre-foot on the rates announced by the contracting officer for water furnished to it during such year computed as follows: The rate announced by the contracting officer for water for Santa Barbara for such year shall be multiplied by $100,000 and the figure thus obtained shall be divided by the total sum due the United States for all water furnished to all member units during such year. Each year, at the time Santa Barbara's payment is first due the Agency for water to be furnished Santa Barbara that year, the Agency shall credit Santa Barbara's account with the total discount due Santa Barbara for such year. In the event Santa Barbara in any year, including the interim period, does not utilize its full discount by failure of the delivery to it of all the water specified in Article 11(b) for that particular year, Santa Barbara shall be entitled to apply the unused portion of said discount on the purchase in any succeeding year or years during the term of this contract of either water specified in Article 11(b) or surplus water. Except as in the preceding sentence specified, no discount shall be allowed on the purchase of surplus water.

(c) Notwithstanding anything in this contract to the contrary:

(i) The aggregate discounts each year for all member units executing contracts with the Agency within the time [fol. 146] specified in Article 29(b) hereof, shall not exceed the sum of $100,000.

(ii) Subject to the foregoing limitation, the Agency shall not during the existence of this nor the Master Contract pay, credit or allow in any year any such aggregate discounts in excess of an amount which can be financed by the total of Agency funds then on hand and available for such purpose plus funds raised by the levy for such year of an Agency tax not exceeding 10¢ on each $100 of assessed valuation of all property in the Agency.

(iii) If, during the existence of this or the Master Contract, the Agency executes member unit contracts relative to a project other than Cachuma Unit, the aggregate each year of all payments and contributions under section 10.2 of the Santa Barbara County Water Agency Act to or for all member units shall not exceed in such year an amount which can be financed for such year by Agency funds then on hand and available for such purpose plus funds raised in such year by the Agency tax specified in (ii) hereof.

(iv) If member unit contracts are executed by the Agency during the existence of this or the Master Contract relative to a project other than Cachuma Unit, and because of the limitations imposed by (ii) and (iii) hereof, sufficient money cannot be obtained by the Agency in any year to fully pay or credit all member units all sums otherwise due [fol. 147] them in such year from the Agency for the purposes specified in said section 10.2 of said Act, then the Agency in such year shall pay to or credit the member units specified in Article 29(b) of this contract on account of their aggregate discounts for such year, a sum equal to two-thirds (2/3) of the Agency funds then on hand and available for such purpose plus funds raised by the levy for such year of an Agency tax at the rate of 6-2/3¢ on each $100 of assessed valuation of all property in the Agency: *Provided*, That if one-third (1/3) of the Agency funds then on hand and available for such purpose plus funds raised by the levy for such year of an Agency tax at the rate of 3-1/3¢

on each $100 of assessed valuation of all property in the Agency are in excess of the sum necessary for the Agency to fulfill its contractual obligations for such year under said section 10.2 of said Act with reference to member units executing contracts with the Agency relative to a project other than Cachuma Unit, then the Agency must use in such year all such excess funds for the payment of discounts of the member units specified in Article 29(b) of this contract.

(v) If, because of the limitations contained in subdivision (c) of this Article, the total of such available and tax raised funds for any year for the member units' discounts specified in (i) hereof is less than $100,000, the amount of such total shall be substituted for the figure $100,000 [fol. 148] wherever it appears in Article 13(c) hereof for the purpose solely of computing Santa Barbara's discount for such year.

(d) The Agency will collect the net rates from each member unit or units for water required to be furnished by the Agency to such member unit pursuant to the Agency contract with such member unit. Each year the Agency will pay to the United States in advance of the delivery of water to a member unit the amount due to the United States for the quantity of water to be delivered to the member unit during such year. Such payment shall be made by the Agency on or before May 15 or such other date, prior to the time for the commencement of delivery of water to the respective member unit of the respective year, as may be specified by the contracting officer in written notice to the Agency.

(e) Santa Barbara will pay the Agency each year in advance of delivery of water to Santa Barbara the amount due the Agency hereunder for the quantity of water to be delivered to Santa Barbara during such year. Such payment shall be made by Santa Barbara on or before May 10 or five (5) days prior to such other date, prior to the time for commencement of delivery of water to Santa Barbara of the respective year, as may be specified by the contracting officer in written notice to the Agency: *Provided*, That such payment can be made by Santa Barbara directly to the

[fol. 149] United States and the sum thus paid will be credited on the amount due the United States from the Agency under the provisions of the Master Contract for water furnished to Santa Barbara.

(f) In the event Santa Barbara fails or refuses to accept delivery of water available for delivery to Santa Barbara, pursuant to Article 11(b) of this contract, or in the event that Santa Barbara, in any year during the first through the seventh periods, fails to submit a schedule for delivery as provided in Article 12 of this contract, said failure or refusal shall not relieve Santa Barbara of its obligation to pay for said water, and Santa Barbara agrees to make payment therefor to the Agency or the United States in the same manner as if said water had been delivered to and accepted by Santa Barbara.

(g) Any difference between the net rate or net rates and the rates due the United States for water furnished Santa Barbara under this or the Master Contract shall be the obligation and liability of the Agency, and the Agency hereby promises to pay the same if, as and when the same are due.

POINTS OF DELIVERY, MEASUREMENT, AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

14. (a) All water for Santa Barbara will be delivered at South Coast Conduit at such points within the boundaries of Santa Barbara as may be mutually agreed upon in writing by the contracting officer and the Agency, but in reach- [fol. 150] ing such agreement the Agency shall act only in accordance with the instructions of Santa Barbara: *Provided,* That in the event the United States shall have reached the construction of the portion of said conduit, which probably will embrace such points, and the location has not been so agreed upon, such points shall be established at locations as in the determination of the contracting officer will best serve the needs of Santa Barbara.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to subdivision (a) of this Article and

with equipment installed, operated and maintained by the United States. Upon the written request of Santa Barbara, the Agency will require that the accuracy of such measurements as to Santa Barbara be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The Agency shall not be responsible for the control, carriage, handling, use, disposal or distribution of water which has been delivered to Santa Barbara by the United States or the Agency, nor for damage or claim of damage of any nature whatsoever for which there is legal responsibility, including, but not limited to, property damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water: *Provided,* That this contract is subject to the [fol. 151] right reserved in the Master Contract by the United States to all waste, seepage and return flow water, except sewage water, derived from water furnished Santa Barbara, and which escapes or is discharged beyond the Agency's boundaries and nothing herein shall be construed as an abandonment or relinquishment by the United States of any such water, but this shall not be construed as claiming for the United States or the Agency any right, as waste, seepage or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the boundaries of Santa Barbara by Santa Barbara or by those claiming by, through or under Santa Barbara.

AGENCY AND UNITED STATES NOT LIABLE FOR WATER SHORTAGE

15. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to Santa Barbara by the Agency pursuant to this contract, through and by means of the Cachuma Unit, and in no event shall any liability accrue against the Agency or the United States or any of their respective officers, agents or employees for any damage, direct or indirect, arising from a shortage on account of drought, unavoidable causes, or errors in operation, except wilful misconduct or gross negligence. In any year in which there may occur a shortage from any cause, the Agency and the United States shall

[fol. 152] apportion the available water supply among the member units entitled, under existing and future contracts including this contract and the Master Contract, to receive water from Cachuma Unit in accordance with the conclusive determination of the contracting officer as follows:

(i) A determination shall be made of the total quantity of water from Cachuma Unit agreed to be furnished by the United States during the respective year under the Master Contract to all member units, including the amount of water with respect to which the Agency has exercised its option pursuant to Article 11(b)(vi) of the Master Contract, for such year for Santa Ynez, the amount so determined being herein referred to as the contractual commitments.

(ii) A determination shall be made of the total quantity of water which is available to the United States from Cachuma Unit for meeting contractual commitments, the amount so determined being herein referred to as the available supply.

(iii) The total quantity of water agreed to be furnished to each member unit during the respective year, under Article 11 of the Master Contract, shall be divided by the contractual commitments, the quotient thus obtained being herein referred to as the contractual entitlement.

[fol. 153] (iv) The available supply shall be multiplied by the contractual entitlement of each member unit and the result shall be the quantity of water required to be delivered by the Agency to the respective member unit during such year, but in no event shall such amount exceed the total quantity of water agreed to be furnished to such member unit and paid for by the Agency pursuant to Article 11 of the Master Contract.

Within seven (7) days of the receipt by the Agency from the contracting officer of notice of an actual or probable shortage, the Agency will transmit a true copy of such notice to Santa Barbara. In the event that in any year

there is delivered to Santa Barbara, by reason of any such shortage or apportionment, or any failure, discontinuance, or reduction of service as set forth in subdivisions (b), or (c) of this Article, less than the quantity of water which Santa Barbara otherwise would have been entitled to receive under the Master or this contract, and for which payment has been made by Santa Barbara to the Agency, the amount of any such overpayment shall be applied first to any accrued indebtedness arising out of this contract by Santa Barbara to the Agency, and any amount of such overpayment then remaining shall, at the option of Santa Barbara, be refunded or credited upon amounts to become due to the Agency from Santa Barbara under the provisions of this contract in the ensuing year. To the extent of such [fol. 154] deficiency arising from errors in operation, or drought or other unavoidable causes or any discontinuance or reduction of service as set forth in subdivision (c) of this Article, such adjustment shall constitute the sole remedy of Santa Barbara or any one having or claiming to have by, through or under Santa Barbara, the right to the use of any of the water supply provided for herein or in the Master Contract.

(b) Notwithstanding any provision of this contract to the contrary, the Agency shall not be obligated to furnish water to Santa Barbara pursuant to this contract unless and until the construction by the United States of facilities to the extent required for the furnishing of the water to Santa Barbara has been completed as conclusively determined by the contracting officer.

(c) By virtue of authority and in accordance with the provisions contained in the Master Contract, the United States may temporarily discontinue or reduce the amount of water to be furnished to Santa Barbara as herein or in the Master Contract provided for the purposes of such maintenance, repair or replacement and investigations and inspections in connection therewith and preliminary thereto as may be necessary of any of the project facilities necessary for the furnishing of water to Santa Barbara or any part thereof, but so far as feasible the Agency will give [fol. 155] Santa Barbara due notice in advance of such

temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the Agency and the United States will, upon the resumption of service, deliver, as nearly as may be feasible, the quantity of water which would have been furnished to Santa Barbara in the absence of such contingency.

STORAGE OF WATER

16. (a) To the extent that storage space is available therefor, the Agency, upon the request of Santa Barbara, shall withhold delivery of and store in Cachuma Reservoir for and on behalf of Santa Barbara any water required to be furnished to Santa Barbara by the Agency pursuant to this contract: *Provided*, That if two or more member units request the storage of water in Cachuma Reservoir, the available storage space will be apportioned each year upon the basis of the amount of water each of such member units is entitled to receive pursuant to its contract with the Agency during the year that such storage space is available, and the release from storage of any such stored water because of the unavailability of storage space and deduction of evaporation and seepage losses shall be upon the same proportional basis.

(b) In the event any water is so stored by any member unit or units, including Santa Barbara, and it becomes necessary to release water from Cachuma Reservoir because of [fol. 156] the lack of storage capacity or for the purposes of repair or maintenance, or in the event that water spills over Cachuma Dam, all water so released or spilled shall be deemed to be water stored by such member unit or units.

(c) The quantity of water which seeps or evaporates from Cachuma Reservoir shall be determined by the contracting officer and from the total amount of water stored by any and all member units, there shall be deducted an amount of water which bears the same ratio to the total amount of such loss as the total amount of water so stored by member units bears to the total amount of water in the Cachuma Reservoir above the invert of the mouth of Tecolote Tunnel. Such seepage or evaporation loss shall be

apportioned amongst storing member units in accordance with the provisions of subparagraph (a) of this Article.

DISPOSITION OF WATER BY SANTA BARBARA

17. (a) Water furnished by the Agency to Santa Barbara may be delivered by Santa Barbara to other member units without the consent of the Agency: *Provided*, That if Santa Barbara receives from the purchasing member unit a sum for such water which is in excess of the total amount paid or owing to the United States for such water plus the expense, if any, incurred by Santa Barbara in handling such water, Santa Barbara shall pay to the Agency or to the United States the amount of such excess, if any.

[fol. 157] (b) Any water furnished by the Agency pursuant to this contract to Santa Barbara and utilized by another member unit as municipal water shall be paid for by Santa Barbara at the rate established pursuant to Article 13 for municipal water, subject to the applicable Santa Barbara discount, if any.

(c) If in any year Santa Barbara sells water to another member unit pursuant to subdivision (a) of this Article, any amounts coming due to the Agency or the United States as a result thereof shall be paid by Santa Barbara to the United States or to the Agency on or before June 10 of the succeeding year.

AGREED CHARGES FOR SANTA BARBARA TO BE A GENERAL OBLIGATION OF SANTA BARBARA

18. Santa Barbara shall pay to the Agency the sums coming due the Agency as a result of Santa Barbara's obligation to pay for water available for furnishing to it pursuant to this contract notwithstanding the individual default in the payment to Santa Barbara by individual water users of assessments, tolls or other charges levied by or owing to Santa Barbara, and Santa Barbara agrees to use all of the powers and resources available to it under the laws of the State of California to collect the funds necessary for it to meet its obligations to the Agency under this contract. Obligations of Santa Barbara arising out of or

[fol. 158] pursuant or incidental to this or the Master Contract shall constitute a general obligation of Santa Barbara and the amounts so coming due shall constitute a general obligation of Santa Barbara notwithstanding the individual default in the payment to Santa Barbara by individual water users of assessments, tolls or other charges levied by or owing to Santa Barbara.

DEFAULTS

19. (a) Should the Agency and Santa Barbara fail to make the payment due to the United States for water to be furnished to Santa Barbara pursuant to this and the Master Contract, and the Agency and Santa Barbara fail to levy the assessments, tolls or other charges necessary to be levied in order for Santa Barbara and the Agency to meet the Agency's and Santa Barbara's obligation to the United States under this and the Master Contract with respect to Santa Barbara, or having levied, should the Agency and Santa Barbara be prevented from collecting such assessments, tolls or other charges by any judicial proceeding or otherwise fail to collect them, no tract of land within Santa Barbara shall be entitled to receive water furnished by the Agency or the United States pursuant to this or the Master Contract to Santa Barbara, except upon payment by the landowner of such assessment or toll charge.

(b) No water shall be furnished to Santa Barbara during any period in which the Agency is in arrears in the [fol. 159] advance payment of charges accrued under the Master Contract with respect to Santa Barbara unless Santa Barbara makes the necessary payment directly to the United States, in which event the Agency shall be relieved of its obligation to make such payment to the United States for such year: *Provided,* That if Santa Barbara makes any payment (exclusive of any penalty due from Santa Barbara) to the United States under this or the Master Contract for water furnished or to be furnished to Santa Barbara, which payment is in excess of the net rates herein provided for in reference to such water, such payment shall not be deemed to be voluntary, and the Agency shall, within fifteen (15) days of such payment by Santa Barbara to the United

States, repay to Santa Barbara the amount of such excess; and *Provided*, further, That if the Agency, having received full or part payment for an obligation of Santa Barbara hereunder, within a reasonable time fails to deliver such payment to the United States in discharge of or as a credit against an obligation of the Agency for Santa Barbara under the Master Contract, then if Santa Barbara makes a full or part payment to the United States in discharge of or as a credit against such obligation of the Agency, the Agency shall, within fifteen (15) days of the making of such payment by Santa Barbara to the United States, repay to Santa Barbara an amount equal to the amount so paid by Santa Barbara to the United States. No water shall be [fol. 160] furnished to Santa Barbara during any period in which Santa Barbara is in arrears in the advance payment of charges accrued under this contract.

(c) No water furnished by the Agency or the United States to Santa Barbara pursuant to this or the Master Contract shall be furnished by Santa Barbara to lands or parties which are in arrears in the payment to Santa Barbara of assessments, rates, tolls or other charges levied or established by Santa Barbara if such assessments, rates, tolls or other charges are necessary for the purpose of raising revenues to meet the payments then due to the United States from the Agency for Santa Barbara for such water.

(d) The United States may, at its option, terminate all rights of Santa Barbara to be furnished water pursuant to this or the Master Contract on sixty (60) days' written notice to the Agency upon the failure of the Agency and Santa Barbara for two or more successive or cumulative years to make any of the payments required in the Master Contract to be made by the Agency to the United States upon behalf of Santa Barbara at the times and in the manner provided if the Agency or Santa Barbara do not pay said delinquent charges within such 60-day period. Within one day of the receipt of such notice, the Agency will deliver a true copy to Santa Barbara. If the Agency or Santa Barbara is prevented by legal action from making [fol. 161] such payments, the United States may not exer-

cise its right of termination for any failure to make such payments when such failure is occasioned by such legal action, unless by the final judgment in such legal action the Master or this contract is rendered unenforceable or void. Said termination shall be effective on January 1 following the date on which such notice is given to the Agency. Upon the effective date of such termination all obligations of the United States and all rights of the Agency and Santa Barbara with respect to Santa Barbara, of any nature whatsoever arising under this and the Master Contract, shall cease, but such termination shall not relieve Santa Barbara of the obligation to make to the Agency all such payments becoming due pursuant to this contract prior to the effective date of such termination. No waiver at any time by the United States of its rights with respect to default under any other matter arising in connection with this contract shall be deemed to be a waiver with respect to any subsequent default or matter.

Levy of Taxes and Assessments—Fixing of Rates and Tolls

20. (a) Santa Barbara shall cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of Santa Barbara to meet its obligations hereunder, to make in full all payments to [fol. 162] be made pursuant to this contract on or before the date such payments become due and to meet its obligations under this contract.

(b) The Agency shall use all powers and resources available to it by law, including the taxing power of the Agency or the power to levy special assessments to collect and pay to the United States and make payments promptly on the due dates thereof of all amounts which the Agency by the provisions of this and the Master Contract shall be obligated to pay to the United States.

Penalty Upon Delinquency in Payment

21. Upon each charge to be paid by Santa Barbara to the Agency pursuant to this contract which shall remain unpaid after the same shall have become due and payable,

there shall be imposed a penalty of one-half (1/2) of one (1) percent per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and Santa Barbara hereby agrees to pay said penalty.

Santa Barbara to Keep Books and Records and Report Crop and Other Data

22. Santa Barbara shall establish and maintain account and other books and records, adequate to enable the Agency to furnish to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the Secretary, of information pertaining [fol. 163] to (a) accounts and financial transactions of Santa Barbara, to the extent that such information pertains to this and the Master Contract and operations thereunder, (b) crops raised and agricultural or livestock products produced on the land within Santa Barbara, a report thereon for the preceding period of twelve (12) calendar months to be furnished to the Agency annually on or before December 31, or such other date or dates as may be fixed by the Agency.

Inspection of Books and Records

23. Subject to applicable California laws and regulations, the proper officers or agents of Santa Barbara shall have full and free access at all reasonable times to the books and official records of the Agency insofar as the same pertain to the matters and things provided for in this and the Master Contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the Agency shall have similar rights in respect to the books and records of Santa Barbara. Upon written request of Santa Barbara to the Agency, the Agency, on behalf of Santa Barbara, will make any and all investigations and inspections of the records of the Bureau of Reclamation permitted under Article 23 of the Master Contract and will promptly furnish Santa Barbara with all the information thereby obtained.

LANDS NOT TO RECEIVE WATER UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

[fol. 164] 24. (a) No water made available to Santa Barbara, pursuant to this or the Master Contract, shall be furnished to any excess land as defined in Article 26 hereof unless the owners thereof shall have executed a valid recordable contract in form prescribed by the United States agreeing to the provisions of Articles 24, 25 and 26 of this contract; agreeing to the appraisal provided for in Article 25 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such land at the date of the appraisal without reference to the construction of the Cachuma Unit, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess land shall carry the right to receive water made available pursuant to this or the Master Contract unless and until the purchase price involved in such sale is approved by the contracting officer and upon proof of fraudulent representation as to the true consideration involved in such sale the United States may instruct Santa Barbara by written notice to refuse to deliver any water subject to this or the Master Contract to the land involved in such fraudulent sale, and Santa Barbara thereafter shall not deliver said water to such land.

(b) If project water furnished by the United States [fol. 165] to a member unit pursuant to this contract reaches the underground strata of excess land owned by a large landowner who has not executed a recordable contract and the large landowner pumps such project water from the underground, the member unit will not be deemed to have furnished such water to said excess lands within the meaning of this contract, if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water to nonexcess land or to excess land with respect to which a recordable contract has been executed.

25. (a) The value of the excess irrigable land within Santa Barbara held in private ownership of a large landowner as defined in Article 26 hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the Agency but the Agency shall be bound to designate as such appraiser one nominated by Santa Barbara, and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the Agency as aforesaid are unable to agree upon the appointment of the third, the presiding justice of Division Three of the Second District Court of Appeals of the State of California shall be requested to designate the third appraiser.

[fol. 166] (b) The following principles shall govern the appraisal:

(i) No value shall be given such land on account of the existing or prospective possibility of securing water from the project.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the first two appraisals shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner may be appraised in like manner.

(e) Excess irrigable lands sold by a large landowner within Santa Barbara shall not carry the right to receive water made available hereunder or under the Master Contract for such land and Santa Barbara agrees to refuse to deliver or permit the delivery of such water to land so sold until, in addition to compliance with the other provisions

hereof, a verified statement showing the sale price upon any such sale shall have been filed with the Agency.

(f) Santa Barbara agrees to take all reasonable steps requested by the contracting officer and the Agency to ascertain the occurrence and conditions of all sales of [fol. 167] irrigable land of large landowners in Santa Barbara and annually to inform the United States and the Agency concerning the same.

(g) A true copy of this and the Master Contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the Agency a d in the office of Santa Barbara, and like copies shall be forwarded to such principal office of the Bureau of Reclamation as may be established hereafter in connection with the project and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LAND

26. (a) As used herein the term "excess land" means that part of the irrigable land within Santa Barbara in excess of 160 acres held in the private beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife as tenants-in-common, by the entirety, as joint tenants, or as community property; the term "large landowner" means an owner of excess land and the term "nonexcess land" means all irrigable land within Santa Barbara which is not excess land as defined herein.

(b) Each large landowner as a further condition precedent to the right to receive water for any of his excess land shall:

(i) Before any water is furnished Santa Barbara [fol. 168] to or for his excess land within Santa Barbara, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions of Articles 24, 25 and 26 of this contract and Articles 25, 26 and 27 of the Master Contract and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as

herein provided and at a price not to exceed the approved, appraised value of such excess land and agreeing further that if said land is not so disposed of within a period of ten (10) years after the date of the execution of said recordable contract the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large landowner; and Santa Barbara agrees that it will refuse to deliver water to any large landowner other than for his nonexcess land within Santa Barbara until such owner meets the conditions precedent herein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large landowner to designate his irrigable land within Santa Barbara which he desires to designate as nonexcess land, file in the office of Santa Barbara, in triplicate, one copy thereof to be furnished by Santa Barbara to the Bureau of Reclamation, and one copy to the Agency, his writ-[fol. 169] ten designation and description of lands so selected to be nonexcess land and upon failure to do so, Santa Barbara shall make such designation and mail a notice thereof to such large landowner, and in the event Santa Barbara fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer who will mail a notice thereof to Santa Barbara and the large landowner. The large landowner shall become bound by any such action on the part of Santa Barbara or the contracting officer and Santa Barbara will deliver water only to the land within its boundaries so designated to be nonexcess land.

Amendment of Federal Reclamation Laws

27. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, Articles 24, 25 and 26 of this contract will no longer be of any force or effect. In the event that the Congress amends the excess-land provisions or any other provisions of the Federal reclamation laws the Agency agrees, at the option of Santa Barbara, insofar as the rights

of other member units and the Agency are not prejudiced thereby, to amend by language to be mutually agreed upon by the United States, the Agency and Santa Barbara the appropriate articles of this and the Master Contract, all [fol. 170] consistently with the provisions of such repeal or amendment.

CONTRACT BETWEEN AGENCY AND UNITED STATES

28. (a) This contract between the Agency and Santa Barbara shall be subject to the terms of the Master Contract, and insofar as this contract involves water to be furnished by the United States pursuant to the Master Contract, Santa Barbara agrees to the provisions of the Master Contract.

(b) In the event that within one year after the execution of the Master Contract, there have not been executed contracts between the Agency and member units which in the aggregate will provide for the disposition of at least 8100 acre-feet per year of the water to be made available pursuant to the Master Contract by the United States during the first period thereof, then this contract shall be of no force or effect. If this and the Master Contract become effective but not all of the proposed member units named in sections (i) to (n), both inclusive, of Article 9 hereof execute such contracts with the Agency, then any provisions hereof relating to any such proposed member unit not executing such an Agency contract shall be disregarded and shall be given no force or effect and shall not create any right or liability in favor of or against Santa Barbara, the United States, the Agency, any governmental unit, city, district, person, corporation or association whether a party hereto or not.

[fol. 171] EXISTING WATER RIGHTS

29. Subject to agreement between the Agency and Santa Barbara:

(a) The water from the Santa Ynez River to be conserved, distributed and used by means of the Cachuma Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, and to be furnished Santa

Barbara under this contract, and to be furnished any member unit by the Agency shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the laws of the State of California. The established water rights of Santa Barbara and Montecito, whether such rights are presently fully developed or not, are hereby recognized by the Agency, and shall be preserved notwithstanding the execution of this contract or of any provision of this contract to the contrary, or any operation or use hereunder.

(b) Santa Barbara and Montecito shall not be required to deliver or transfer to the United States, the Agency, the Cachuma Unit, or to any person or entity entitled to water therefrom any water or water rights to which Santa Barbara or Montecito is entitled under their established water rights.

(c) The Agency hereby recognizes and agrees not to take, restrict, impair or interfere with any or all of said pres- [fol. 172] ently established rights to water for present use and future development based upon such rights.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

30. The expenditure of any money or the performance of any work or service by the United States provided for in the Master Contract which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds or the failure of an allotment of funds shall not relieve Santa Barbara from any obligations under this contract and no liability shall accrue to the Agency in case such funds are not so appropriated or alloted: *Provided*, That in the event that water deliveries are halted or curtailed as a result of such failure to appropriate or allot funds, the obligation of Santa Barbara to make payments pursuant to this contract shall be reduced to the extent of such halting or curtailment of service.

FAILURE OF UNITED STATES TO PERFORM

31. The Agency shall not be liable for failure to perform any portion of this contract to the extent that such failure is caused by the failure of the United States to perform any obligation imposed on the United States by the Master Contract: *Provided,* That the obligations of Santa Barbara [fol. 173] hereunder shall be reduced to the extent that the Agency is prevented from performing as aforesaid: *Provided, further,* That the Agency shall diligently and promptly pursue all rights and remedies available to it to enforce the rights of the Agency and its member units against the United States under the Master Contract relative to such failure to perform.

NOTICES

32. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given when deposited in the United States Post Office at Santa Barbara in a postage prepaid registered envelope addressed to the "Santa Barbara County Water Agency, Court House, Santa Barbara, California" if the Agency is being given notice, and to "City of Santa Barbara, City Hall, Santa Barbara, California" if Santa Barbara is being given notice, or such other addresses as from time to time may be designated by either party in a written notice to the other: *Provided,* however, That this Article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT

33. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties and Santa Barbara may assign any or all of its interests herein subject to the provisions of Section 5.6 of the Santa Barbara [fol. 174] County Water Agency Act, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the Secretary. In the case of such an assignment by Santa Barbara, at the option of the Agency, Santa Barbara may

be required to guarantee payments by the assignee member unit of any obligation owing the Agency in connection with the assigned interest. No sale or other disposal by Santa Barbara for use outside of Santa Barbara as now or hereafter constituted or another member unit of any water, or the right to the use thereof, furnished to Santa Barbara pursuant to this contract, shall be valid.

DUTIES OF AGENCY

34. The Agency hereby covenants and agrees to promptly and completely fulfill its obligations under this and the Master Contract and to apply and pay to the United States for credit against obligations of the Agency for Santa Barbara under the Master Contract, all sums received by the Agency from Santa Barbara hereunder.

ASSURANCES RELATING TO VALIDITY OF CONTRACTS—LITIGATION

35. Promptly after the execution and delivery of this contract the Agency shall file or cause to be filed and prosecute or cause to be prosecuted to a final decree, including any appeal therefrom, an action at law, or in equity or a special proceeding for the judicial examination, approval; [fol. 175] and confirmation of the proceedings had for the organization of the Agency and the proceedings of the Board of Directors of the Agency and the proceedings of the Agency leading up to and including the making of this contract and the validity of the provisions thereof. Prior to instituting or defending any action in law or equity or any special proceeding, the Agency shall give written notice thereof to Santa Barbara in order that Santa Barbara may take such measures as Santa Barbara deems necessary to protect Santa Barbara's interests, if any, in such action or proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year first hereinabove written.

SANTA BARBARA COUNTY WATER AGENCY

By T. A. TWITCHELL
Chairman, Board of Directors

Attest:

J. E. LEWIS
Clerk of said Agency
(Seal of Santa Barbara
County Water Agency)

CITY OF SANTA BARBARA, a Municipal Corporation

By

NORRIS MONTGOMERY
Mayor

(Seal of the City of
Santa Barbara)

[fol. 176] Approved and Countersigned:

F. O. BOHNETT
STEWART S. MAITLAND
W. D. MAC GILLIVRAY

Approved:

HENRY T. BAILEY
City Attorney

The foregoing contract is hereby approved this 29th day of November, 1949.

NORRIS MONTGOMERY
Mayor

The foregoing contract is hereby approved as to form and legality this 15th day of September, 1949.

HENRY T. BAILEY
City Attorney

[fol. 177] The foregoing Contract was ordered executed by the City of Santa Barbara, by the electors of said City, at a Special Municipal Election held November 22, 1949, and was duly executed by City of Santa Barbara officials

at a Special Meeting of the City Council held November 29th, 1949, 2:00 P.M.

/s/ Faye Griffen
FAYE GRIFFEN, CITY CLERK
CITY OF SANTA BARBARA, CALIFORNIA

(SEAL OF THE CITY OF SANTA BARBARA)

[fol. 416] EXHIBIT "G" TO COMPLAINT, ETC.

SANTA BARBARA COUNTY WATER AGENCY

CONTRACT FOR THE FURNISHING OF WATER TO MONTECITO COUNTY WATER DISTRICT

1. THIS CONTRACT, made this 12th day of September, 1949, at and in the County of Santa Barbara, State of California, between THE SANTA BARBARA COUNTY WATER AGENCY, herein styled "the Agency", established by Chapter 1501 of the 1945 Statutes of California, as amended, and the MONTECITO COUNTY WATER DISTRICT, herein styled "Montecito", a political subdivision of the State of California, duly organized and existing under the County Water District Act, being Chapter 592 of the 1913 Statutes of California, as amended,

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the City of Santa Barbara, the Carpinteria County Water District, the Goleta County Water District, the Montecito County Water District, the Summerland County Water District and the Santa Ynez River Water Conservation District are "Districts" lying within the Agency as defined by subdivision (f) of section 2 of the Santa Barbara County Water Agency Act, and it is contemplated that said Districts will become "member units" [fol. 417] of the Agency, as defined in and by the Santa Barbara County Water Agency Act, with respect to that

certain contract between the United States and the Agency bearing the date of the 12th day of September, 1949, (which contract is hereinafter styled the "Master Contract"), a copy of which is attached hereto, marked Exhibit "A", and by reference made a part hereof; and

3. WHEREAS, the lands and inhabitants within the Agency and within each and all of said Districts, including Montecito, are in critical need of additional water for municipal, domestic and irrigation uses; and

4. WHEREAS, investigations of the present water supply indicate that irigated and irrigable lands within the boundaries of the Agency and of said Districts, including Montecito, are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation and certain areas require a new or supplemental supply of water for municipal and miscellaneous purposes for present and future needs, and that ground water supplies are seriously depleted and in need of replenishment and that a supplemental water supply to meet these present and potential needs can be made available by and through the works to be constructed by the United States under said Master Contract; and

5. WHEREAS, investigations of the stream flow in the Santa Ynez River and its tributaries and present and [fol. 418] future requirements for beneficial uses indicate that there will be available, for furnishing for the use and benefit of said member units, including Montecito, a supplemental water supply from Cachuma Unit for irrigation, municipal, industrial and domestic uses; and

6. WHEREAS, the United States proposes to construct the Cachuma Unit of the Santa Barbara County Project, said unit to consist of Cachuma Dam and Reservoir, designed to have water storage capacity commensurate with the water supply requirements of the Master Contract, Tecolote Tunnel and the South Coast Conduit, for diversion, storage, carriage and distribution to member units of waters of the Santa Ynez River and its tributaries and water developed in Tecolote Tunnel for irrigation; municipal, domestic, industrial and other beneficial uses and purposes as authorized by means of a report by the Secretary of the Interior,

dated December 22, 1947, and approved and adopted January 7, 1948, (see House Document No. 587, 80th Congress, 2nd Session), the total estimated cost of the proposed construction at cost levels as of the date of said report being $28,610,000; and

7. WHEREAS, the United States and the Agency, pursuant to the provisions, among others, of sections 9(c)(2) and 9(e) of the Reclamation Project Act of 1939, have executed the Master Contract whereby the Agency will be furnished by the United States a water supply from the Cachuma Unit for the use and benefit of the Agency's said member [fol. 419] units, including Montecito; and

8. WHEREAS, Montecito desires to contract with the Agency for the furnishing by the Agency of a water supply from the Cachuma Unit to and for the use and benefit of Montecito, for which Montecito will make payment to the Agency or to the United States upon the basis, at the rates and pursuant to the conditions in this contract hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby agreed by the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" of "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Initial delivery date" shall mean the date on which water will be available for furnishing by the United States pursuant to subdivision (a) of Article 11 of the Master Contract by means of the Cachuma Unit and which shall be announced in advance by the Secretary to the Agency in writing;

[fol. 420] (c) "Year" shall mean the period from May 15 through May 14, both dates inclusive;

(d) "Municipal water" shall mean water furnished or to be furnished from Cachuma Unit (i) to or used by or in Santa Barbara, or (ii) to or used by or in any incorporated city, or (iii) to or used by or in any "municipal area" as said term "municipal area" is defined in Article 13 of this contract;

(e) "Irrigation water" shall mean water furnished or to be furnished from Cachuma Unit to member units to be used or used for beneficial purposes other than those specified in subdivision (d) of this Article;

(f) "Member unit" shall mean any district as defined in and by the Santa Barbara County Water Agency Act which enters into a contract with the Agency for the payment for water to be furnished to such member unit by the Agency or the United States pursuant to the Master Contract;

(g) "Interim period" shall mean the period commencing with the initial delivery date and extending through May 14 of the fourth year after the year in which the initial delivery date occurs;

(h) "Period" shall mean each of the last seven consecutive five-year periods of the term of this contract, the first of which will commence on May 15 immedi- [fol. 421] ately following the close of the interim period, and which periods shall be identical with the periods defined in the Master Contract;

(i) "Santa Barbara" shall mean the City of Santa Barbara;

(j) "Goleta" shall mean the Goleta County Water District;

(k) "Summerland" shall mean the Summerland County Water District;

(l) "Montecito" shall mean the Montecito County Water District;

(m) "Carpinteria" shall mean the Carpinteria County Water District;

(n) "Santa Ynez" shall mean the Santa Ynez River Water Conservation District;

(o) "Santa Barbara County Water Agency Act" shall mean the Santa Barbara County Water Agency Act, passed by the California Legislature and approved July 18, 1945, as now or hereafter amended.

(p) Whenever hereunder the Agency is to furnish or deliver water to Montecito or other member units, the delivery or furnishing of such water to Montecito, or other member units, from the Cachuma Unit by the United States shall be construed as furnishing or delivery by the Agency.

[fol. 422] TERM OF CONTRACT

10. This contract shall become effective upon its execution and, subject to the limitations of Article 29(b) hereof, shall remain in effect for a period of forty (40) years commencing with the year in which the initial delivery date occurs: *Provided*, That in the event the Congress of the United States during the term of the Master Contract enacts legislation permitting the renewal or extension of the Master Contract, and the Agency, at its option, extends or renews the Master Contract in conformance with and subject to the terms of the then existing law, then Montecito, at its option, may extend or renew this contract in conformance with and subject to the terms of the then existing law, and subject to the terms of the Master Contract as so extended or renewed: *Provided, further*, That whenever the Master Contract is terminated in the manner and for the cause or causes specified in the Master Contract this contract shall terminate.

WATER TO BE FURNISHED BY UNITED STATES AND AGENCY

11. (a) To the extent that water and the facilities necessary for furnishing such water to member units are available therefor, as determined by the contracting officer, the Agency shall furnish to Montecito each year during [fol. 423] the interim period, and Montecito each year

during such interim period shall pay to the Agency, which in turn shall pay to the United States, for such quantities of water as are specified in a schedule submitted by Montecito to the Agency in accordance with Article 12 for each such year.

(b) Each year the Agency shall furnish to, and Montecito shall pay to the Agency for, which in turn shall pay to the United States for Montecito:

500 acre-feet of water during the first period.
1,000 acre-feet of water during the second period.
1,500 acre-feet of water during the third period.
1,900 acre-feet of water during the fourth period.
2,400 acre-feet of water during the fifth period.
2,800 acre-feet of water during the sixth period.
2,900 acre-feet of water during the seventh period.

(c) While the Cachuma Unit has been designed to serve the present and future reasonable beneficial needs and uses of the member units, and while this contract has been executed to serve the present and future beneficial needs and uses of Montecito, there may be temporarily available at times, for reasons beyond the control of the contracting parties hereto, quantities of water in excess of the amounts necessary for the Agency to meet its obligations under this and other member unit contracts. Each year in which there [fol. 424] is such surplus water available from Cachuma Unit, as determined by the contracting officer, the Agency shall offer, at rates not to exceed those specified in Article 13 hereof, such water to all member units, including Montecito, and the Agency is prohibited from selling such water to any but a member unit. Montecito may purchase during any such year all or part of such water, subject to the limitations of Article 11(d): *Provided*, That in the event Montecito does not indicate to the Agency in writing its desire to accept and pay for such surplus water within fifty (50) days after receiving written notice from the United States or the Agency of its availability, Montecito's right to purchase such water during the respective year shall terminate: *Provided, further*, That in the event the United States in any year sells or furnishes any such

surplus water to others than a member unit, the Agency, in accordance with the Master Contract, shall take such measures as are necessary (i) to prevent such water from being sold by the United States at a rate which is less than that offered to the Agency for the benefit of its member units, (ii) to provide that the Contract between the United States and such other party shall expressly provide that the Agency and the member units shall have a prior right to such water in the event of a shortage and that the right of further service to such other party shall be subject to the present and future needs of the [fol. 425] member units for quantities of water in excess of those stipulated herein and in the Master Contract, (iii) to provide that each such contract between the United States and party other than the Agency and a member unit shall be for a term of no longer than one year, and (iv) to provide that revenues derived by the United States in excess of the costs of operation and maintenance from the sale of all such surplus water, whether to a member unit or otherwise, shall be credited to the construction cost of the Cachuma Unit.

(d) In the event that member units desire to purchase more of the excess water specified in Article 11(c) than is available, Montecito shall be entitled to purchase that portion of the available supply as the amount of water specified for Montecito by Article 11(b) of the Master Contract in that year from Cachuma Unit bears to the amount of water specified by said Article 11(b) of the Master Contract in that year for all member units desiring to purchase such excess water in that year from Cachuma Unit: *Provided*, That if any member unit has assigned to Montecito any of such member unit's right to receive water specified in said Article 11(b) of the Master Contract, the right of Montecito to purchase excess water shall be correspondingly increased.

TIME FOR DELIVERY OF WATER

12. (a) On or before March 15, preceding each year [fol. 426] during the interim period the contracting officer will notify the Agency in writing of his estimate of the

quantity of water which will be available from the Cachuma Unit during the ensuing year, which estimate may be revised from time to time by the contracting officer during such year. Within seven (7) days after receipt of such notice, or any revision thereof, the Agency shall transmit a true copy thereof to Montecito.

(b) Except as provided in subdivision (c) of this Article, Montecito shall submit in writing to the Agency on or before March 10 of each year during the term of this contract a schedule, subject to the provisions of Article 11 hereof and in form satisfactory to the Agency and the contracting officer, indicating the desired times and quantities for the delivery of water to Montecito pursuant to said Article 11 during the following year. The Agency shall, within the provisions hereof, make all reasonable effort to deliver said water in accordance with said schedule, or any revision thereof submitted by Montecito within a reasonable time before the desired change, if any, of time for delivery. If in any year during the interim period the contracting officer notifies the Agency that he has revised his estimate of the quantity of water which will be available from the Cachuma Unit during such year, the Agency within seven (7) days of the receipt of such notice, shall transmit a true copy of such notice to Montecito, and [fol. 427] Montecito, within a reasonable time thereafter, may revise its schedule to avail itself of any increased supply of water or to conform with any decreased supply of water.

(c) Within seven (7) days after the Agency has received written notice from the contracting officer of his estimate of the quantity of water which will be available from the Cachuma Unit during the portion of the interim period beginning with the initial delivery date and ending on the following May 15, the Agency shall transmit a true copy of such notice to Montecito. Montecito, within a reasonable time after receipt by it of such notice, shall submit a schedule indicating the desired times and quantities for the delivery of water for such portion of the interim period.

RATE AND METHOD OF PAYMENT FOR WATER

13. (a) The rate or rates to be paid by Montecito for water furnished hereunder, and which Montecito hereby agrees to pay, shall be the rate or rates announced each year by the contracting officer in accordance with the provisions of Article 13(a) of the Master Contract for water to be furnished Montecito during the subsequent year (hereinafter called the "gross rate or gross rates"), less the discount, if any, hereinafter provided for, (hereinafter called "the discount"), which resultant rate to be paid [fol. 428] by Montecito shall be known as the "net rate or net rates". In no event shall either the gross or the net rates so established for any year during the term of this contract be in excess of Ten Dollars ($10.00) per acre-foot for irrigation water for Santa Ynez, nor Twenty-five Dollars ($25.00) per acre-foot for irrigation water for Montecito, Carpinteria, Goleta and Summerland, nor Thirty-five Dollars ($35.00) per acre-foot for municipal water: *Provided*, That neither the gross nor net rates for irrigation water nor municipal water shall include an interest component. In the event the contracting officer announces gross rates for any year which are less than the maximum rates herein provided for, the gross rates so announced shall be in the ratio of Thirty-five Dollars ($35.00) per acre-foot for municipal water, Twenty-five Dollars ($25.00) per acre-foot for irrigation water for Summerland, Carpinteria, Goleta and Montecito, and Ten Dollars ($10.00) per acre-foot for irrigation water for Santa Ynez.

(b) Notwithstanding any other provisions of this contract:

(i) The net rate fixed pursuant to subdivision (a) of this Article for municipal water shall be paid by Montecito to the Agency for all water furnished by the Agency pursuant to this contract to Montecito which is delivered to users within or used within boundaries of any incorporated city;

[fol. 29] (ii) The net rates for irrigation water for Montecito, fixed as provided in subdivision (a) of this

Article, shall be paid by Montecito for all water furnished to it: *Provided*, That whenever there shall exist within Montecito a municipal area or municipal areas as hereinafter defined, then, during the period that such municipal area or municipal areas exist within Montecito, Montecito shall pay to the Agency for the water furnished by the Agency pursuant to this contract, to Montecito upon the following basis:

A. The net rate fixed for municipal water, as provided in subdivision (a) of this Article, shall be paid by Montecito to the Agency for that portion of the total quantity of water required to be furnished to Montecito by the Agency during the respective year, pursuant to Article 11 hereof, which bears the same ratio to such total quantity of water required to be delivered, as aforesaid, to Montecito during such year, as the aggregate acreage of municipal areas within Montecito bears to the total acreage of Montecito, and the remaining portion of the water furnished or to be furnished hereunder by the Agency during such year shall be paid by Montecito at the net rate fixed, as provided in subdivision [fol. 430] (a) of this Article, for irrigation water for Montecito.

B. After receipt by the Agency of the notice furnished by the contracting officer pursuant to Article 12(c) of the Master Contract, and before the initial delivery date, and not less than sixty (60) days prior to and not sooner than one hundred and eighty (180) days prior to each period, the Agency shall determine with respect to Montecito, from the records of Montecito, whether there exists within Montecito an area of not less than three hundred (300) contiguous acres of land in which there exists an average of more than one water consumer service connection per acre. If any such area or areas are found by the Agency to exist, each such area shall be designated by the Agency as a "municipal area" and shall be given a suitable name, which shall be chosen by the governing body of Montecito,

and the Agency promptly will notify the United States thereof. No area within one municipal area shall be included within any other municipal area. Each municipal area so designated by the Agency prior to the initial delivery date shall for the purposes of this agreement be deemed to be a municipal area during the interim period and each mu- [fol. 431] nicipal area so designated by the Agency as herein provided during or after the interim period shall be deemed a municipal area for the period next commencing after such determination, it being intended that after the interim period no such determination shall be effective for more than one period.

(c) Montecito each year shall be entitled to a discount per acre-foot on the rates announced by the contracting officer for the water furnished to it under the provisions of Article 11(b) of this contract, whether irrigation or municipal, computed as follows: The rate announced by the contracting officer for irrigation water for Montecito for such year shall be multiplied by $100,000, and the figure thus obtained shall be divided by the total sum due the United States for all water specified in Article 11(b) of the Master Contract for such year, including any water for Santa Ynez for such year for which the option specified in (vi) of said Article is exercised. Montecito each year during the interim period shall be entitled to a discount per acre-foot on the rates announced by the contracting officer for water furnished to it during such year computed as follows: The rate announced by the contracting officer for irrigation water for Montecito for such year shall be multiplied by $100,000 and the figure thus obtained shall be divided by the total sum due the United States for all water [fol. 432] furnished to all member units during such year. Each year, at the time Montecito's payment is first due the Agency for water to be furnished Montecito that year, the Agency shall credit Montecito's account with the total discount due Montecito for such year. In the event Montecito in any year, including the interim period, does not utilize its full discount by failure of the delivery to it of all the

water specified in Article 11(b) for that particular year, Montecito shall be entitled to apply the unused portion of said discount on the purchase in any succeeding year or years during the term of this contract of either water specified in Article 11(b) or surplus water. Except as in the preceding sentence specified, no discount shall be allowed on the purchase of surplus water.

(d) Notwithstanding anything in this contract to the contrary:

(i) The aggregate discounts each year for all member units executing contracts with the Agency within the time specified in Article 29(b) hereof, shall not exceed the sum of $100,000.

(ii) Subject to the foregoing limitation, the Agency shall not during the existence of this nor the Master Contract pay, credit or allow in any year any such aggregate discounts in excess of an amount which can be financed by the total of Agency funds then on hand and available for such [fol. 433] purpose plus funds raised by the levy for such year of an Agency tax not exceeding .10¢ on each $100 of assessed valuation of all property in the Agency.

(iii) If, during the existence of this or the Master Contract, the Agency executes member unit contracts relative to a project other than Cachuma Unit, the aggregate each year of all payments and contributions under Section 10.2 of the Santa Barbara County Water Agency Act ot or for all member units shall not exceed in such year an amount which can be financed for such year by Agency funds then on hand and available for such purpose plus funds raised in such year by the Agency tax specified in (ii) hereof.

(iv) If member unit contracts are executed by the Agency during the existence of this or the Master Contract relative to a project other than Cachuma Unit, and because of the limitations imposed by (ii) and (iii) hereof, sufficient money cannot be obtained by the Agency in any year to fully pay or credit all member units all sums otherwise due them in such year from the Agency for the pur-

poses specified in said section 10.2 of said Act, then the Agency in such year shall pay to or credit the member units specified in Article 29(b) of this contract on account of their aggregate discounts for such year, a sum equal to two-thirds (⅔) of the Agency funds then on hand and available for such purpose plus funds raised by the levy [fol. 434] for such year of an Agency tax at the rate of 6⅔¢ on each $100 of assessed valuation of all property in the Agency: *Provided*, That if one-third (⅓) of the Agency funds then on hand and available for such purpose plus funds raised by the levy for such year of an Agency tax at the rate of 3⅓¢ on each $100 of assessed valuation of all property in the Agency are in excess of the sum necessary for the Agency to fulfill its contractual obligations for such year under said section 10.2 of said Act with reference to member units executing contracts with the Agency relative to a project other than Cachuma Unit, then the Agency must use in such year all such excess funds for the payment of discounts of the member units specified in Article 29(b) of this contract.

(v) If, because of the limitations contained in subdivision (d) of this Article, the total of such available and tax raised funds for any year for the member units' discounts specified in (i) hereof is less than $100,000, the amount of such total shall be substituted for the figure $100,000 wherever it appears in Article 13(c) hereof for the purpose solely of computing Montecito's discount for such year.

(e) The Agency will collect the net rates from each member unit or units for water required to be furnished by the Agency to such member unit pursuant to the Agency contract with such member unit. Each year the Agency will [fol. 435] pay to the United States in advance of the delivery of water to a member unit the amount due to the United States for the quantity of water to be delivered to the member unit during such year. Such payment shall be made by the Agency on or before May 15 or such other date, prior to the time for the commencement of delivery of water to the respective member unit of the respective year, as may be specified by the contracting officer in written notice to the Agency.

(f) Montecito will pay the Agency each year in advance of delivery of water to Montecito the amount due the Agency hereunder for the quantity of water to be delivered to Montecito during such year. Such payment shall be made by Montecito on or before May 10 or five (5) days prior to such other date, prior to the time for commencement of delivery of water to Montecito of the respective year, as may be specified by the contracting officer in written notice to the Agency: *Provided*, That such payment can be made by Montecito directly to the United States and the sum thus paid will be credited on the amount due the United States from the Agency under the provisions of the Master Contract for water furnished to Montecito.

(g) In the event Montecito fails or refuses to accept delivery of water available for delivery to Montecito, pursuant to Article 11(b) of this contract, or in the event that Montecito, in any year during the first through the [fol. 436] seventh periods, fails to submit a schedule for delivery as provided in Article 12 of this contract, said failure or refusal shall not relieve Montecito of its obligation to pay for said water, and Montecito agrees to make payment therefor to the Agency or the United States in the same manner as if said water had been delivered to and accepted by Montecito.

(h) Any difference between the net rate or net rates and the rates due the United States for water furnished Montecito under this or the Master Contract shall be the obligation and liability of the Agency, and the Agency hereby promises to pay the same if, as and when the same are due.

POINTS OF DELIVERY, MEASUREMENT, AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

14. (a) All water for Montecito will be delivered at South Coast Conduit at such points within the boundaries of Montecito as may be mutually agreed upon in wriging by the contracting officer and the Agency, but in reaching such agreement the Agency shall act only in accordance with the instructions of Montecito: *Provided*, That in the event

the United States shall have reached the construction of the portion of said conduit, which probably will embrace such points, and the location has not been so agreed upon, such points shall be established at locations as in the [fol. 437] determination of the contracting officer will best serve the needs of Montecito.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to subdivision (a) of this Article and with equipment installed, operated, and maintained by the United States. Upon the written request of Montecito, the Agency will require that the accuracy of such measurements as to Montecito be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The Agency shall not be responsible for the control, carriage, handling, use, disposal or distribution of water which has been delivered to Montecito by the United States or the Agency, nor for damage or claim of damage of any nature whatsoever for which there is legal responsibility, including, but not limited to, property damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water: *Provided*, That this contract is subject to the right reserved in the Master Contract by the United States to all waste, seepage and return flow water, except sewage water, derived from water furnished Montecito, and which escapes or is discharged beyond the Agency's boundaries and nothing herein shall be construed as an abandonment or relinquishment by the United States of any such water, [fol. 438] but this shall not be construed as claiming for the United States or the Agency any right, as waste, seepage or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the boundaries of Montecito by Montecito or by those claiming by, through or under Montecito.

AGENCY AND UNITED STATES NOT LIABLE FOR WATER SHORTAGE

15. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to Montecito by the Agency pursuant to this contract, through and by means of the Cachuma Unit, and in no event shall any liability accrue against the Agency or the United States or any of their respective officers, agents or employees for any damage, direct or indirect, arising from a shortage on account of drought, unavoidable causes, or errors in operation, except wilful misconduct or gross negligence. In any year in which there may occur a shortage from any cause, the Agency and the United States shall apportion the available water supply among the member units entitled, under existing and future contracts including this contract and the Master Contract, to receive water from Cachuma Unit in accordance with the conclusive determination of the contracting officer as follows:

[fol. 439] (i) A determination shall be made of the total quantity of water from Cachuma Unit agreed to be furnished by the United States during the respective year under the Master Contract to all member units, including the amount of water with respect to which the Agency has exercised its option pursuant to Article 11(b)(vi) of the Master Contract, for such year for Santa Ynez, the amount so determined being herein referred to as the contractual commitments.

(ii) A determination shall be made of the total quantity of water which is available to the United States from Cachuma Unit for meeting contractual commitments, the amount so determined being herein referred to as the available supply.

(iii) The total quantity of water agreed to be furnished to each member unit during the respective year, under Article 11 of the Master Contract, shall be divided by the contractual commitments, the quotient thus obtained being herein referred to as the contractual entitlement.

(iv) The available supply shall be multiplied by the contractual entitlement of each member unit and the result

shall be the quantity of water required to be delivered by the Agency to the respective member unit during such year, but in no event shall such amount exceed the total quantity of water agreed to be furnished to such member unit and paid for by the Agency pursuant to Article 11 of the Master [fol. 440] Contract. Within seven (7) days of the receipt by the Agency from the contracting officer of notice of an actual or probable shortage, the Agency will transmit a true copy of such notice to Montecito. In the event that in any year there is delivered to Montecito, by reason of any such shortage or apportionment, or any failure, discontinuance, or reduction of service as set forth in subdivisions (b) or (c) of this Article, less than the quantity of water which Montecito otherwise would have been entitled to receive under the Master or this contract, and for which payment has been made by Montecito to the Agency, the amount of any such overpayment shall be applied first to any accrued indebtedness arising out of this contract by Montecito to the Agency, and any amount of such overpayment then remaining shall, at the option of Montecito, be refunded or credited upon amounts to become due to the Agency from Montecito under the provisions of this contract in the ensuing year. To the extent of such deficiency arising from errors in operation, or drought or other unavoidable causes or any discontinuance or reduction of service as set forth in subdivision (c) of this Article, such adjustment shall constitute the sole remedy of Montecito or any one having or claiming to have by, through or under Montecito, the right to the use of any of the water supply provided for herein or in the Master Contract.

(b) Notwithstanding any provision of this contract to [fol. 441] the contrary, the Agency shall not be obligated to furnish water to Montecito pursuant to this contract unless and until the construction by the United States of facilities to the extent required for the furnishing of the water to Montecito has been completed as conclusively determined by the contracting officer.

(c) By virtue of authority and in accordance with the provisions contained in the Master Contract, the United States may temporarily discontinue or reduce the amount

of water to be furnished to Montecito as herein or in the Master Contract provided for the purposes of such maintenance, repair or replacement and investigations and inspections in connection therewith and preliminary thereto as may be necessary of any of the project facilities necessary for the furnishing of water to Montecito or any part thereof, but so far as feasible the Agency will give Montecito due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the Agency and the United States will, upon the resumption of service, deliver, as nearly as may be feasible, the quantity of water which would have been furnished to Montecito in the absence of such contingency.

STORAGE OF WATER

16. (a) To the extent that storage space is available [fol. 442] therefor, the Agency, upon the request of Montecito, shall withhold delivery of and store in Cachuma Reservoir for and on behalf of Montecito any water required to be furnished to Montecito by the Agency pursuant to this contract: *Provided*, That if two or more member units request the storage of water in Cachuma Reservoir, the available storage space will be apportioned each year upon the basis of the amount of water each of such member units is entitled to receive pursuant to its contract with the Agency during the year that such storage space is available, and the release from storage of any such stored water because of the unavailability of storage space and deduction of evaporation and seepage losses shall be upon the same proportional basis.

(b) In the event any water is so stored by any member unit or units, including Montecito, and it becomes necessary to release water from Cachuma Reservoir because of the lack of storage capacity or for the purposes of repair or maintenance, or in the event that water spills over Cachuma Dam, all water so released or spilled shall be deemed to be water stored by such member unit or units.

(c) The quantity of water which seeps or evaporates from Cachuma Reservoir shall be determined by the contracting officer and from the total amount of water stored by any and all member units, there shall be deducted an amount of water which bears the same ratio to the [fol. 443] total amount of such loss as the total amount of water so stored by member units bears to the total amount of water in the Cachuma Reservoir above the invert of the mouth of Tecolote Tunnel. Such seepage or evaporation loss shall be apportioned amongst storing member units in accordance with the provisions of subparagraph (a) of this Article.

DISPOSITION OF WATER BY MONTECITO

17. (a) Water furnished by the Agency to Montecito may be delivered by Montecito to other member units without the consent of the Agency: *Provided,* That if Montecito receives from the purchasing member unit a sum for such water which is in excess of the total amount paid or owing to the United States for such water plus the expense, if any, incurred by Montecito in handling such water, Montecito shall pay to the Agency or to the United States the amount of such excess, if any.

(b) Any water furnished by the Agency pursuant to this contract to Montecito and utilized by another member unit as municipal water shall be paid for by Montecito at the rate established pursuant to Article 13 for municipal water, subject to the applicable Montecito discount, if any.

(c) If in any year Montecito sells water to another member unit pursuant to subdivision (a) of this Article, any amounts coming due to the Agency or the United [fol. 444] States as a result thereof shall be paid by Montecito to the United States or to the Agency on or before June 10 of the succeeding year.

AGREED CHARGES FOR MONTECITO TO BE A GENERAL OBLIGATION OF MONTECITO

18. Montecito shall pay to the Agency the sums coming due the Agency as a result of Montecito's obligation to

pay for water available for furnishing to it pursuant to this contract notwithstanding the individual default in the payment to Montecito by individual water users of assessments, tolls or other charges levied by or owing to Montecito, and Montecito agrees to use all of the powers and resources available to it under the laws of the State of California to collect the funds necessary for it to meet its obligations to the Agency under this contract. Obligations of Montecito arising out of or pursuant to incidental to this or the Master Contract shall constitute a general obligation of Montecito and the amounts so coming due shall constitute a general obligation of Montecito notwithstanding the individual default in the payment to Montecito by individual water users of assessments, tolls or other charges levied by or owing to Montecito.

DEFAULTS

19. (a) Should the Agency and Montecito fail to make the payment due to the United States for water to be [fol. 445] furnished to Montecito pursuant to this and the Master Contract, and the Agency and Montecito fail to levy the assessments, tolls or other charges necessary to be levied in order for Montecito and the Agency to meet the Agency's and Montecito's obligation to the United States under this and the Master Contract with respect to Montecito, or having levied, should the Agency and Montecito be prevented from collecting such assessments, tolls or other charges by any judicial proceeding or otherwise fail to collect them, no tract of land within Montecito shall be entitled to receive water furnished by the Agency or the United States pursuant to this or the Master Contract to Montecito, except upon payment by the landowner of such assessment or toll charge.

(b) No water shall be furnished to Montecito during any period in which the Agency is in arrears in the advance payment of charges accrued under the Master Contract with respect to Montecito unless Montecito makes the necessary payment directly to the United States, in which event the Agency shall be relieved of its obligation to make such payment to the United States for such year: *Provided,*

That if Montecito makes any payment (exclusive of any penalty due from Montecito) to the United States under this or the Master Contract for water furnished or to be furnished to Montecito, which payment is in excess of the net rates herein provided for in reference to such water, such payment shall not be deemed to be voluntary, and [fol. 446] the Agency shall, within fifteen (15) days of such payment by Montecito to the United States, repay to Montecito the amount of such excess; and *Provided, further*, That if the Agency, having received full or part payment for an obligation of Montecito hereunder, within a reasonable time fails to deliver such payment to the United States in discharge of or as a credit against an obligation of the Agency for Montecito under the Master Contract, then if Montecito makes a full or part payment to the United States in discharge of or as a credit against such obligation of the Agency, the Agency shall, within fifteen (15) days of the making of such payment by Montecito to the United States, repay to Montecito an amount equal to the amount so paid by Montecito to the United States. No water shall be furnished to Montecito during any period in which Montecito is in arrears in the advance payment of charges accrued under this contract.

(c) No water furnished by the Agency or the United States to Montecito pursuant to this or the Master Contract shall be furnished by Montecito to lands or parties which are in arrears in the payment to Montecito of assessments, rates, tolls or other charges levied or established by Montecito if such assessments, rates, tolls or other charges are necessary for the purpose of raising revenues to meet the payments then due to the United States from [fol. 447] the Agency for Montecito for such water.

(d) The United States may, at its option, terminate all rights of Montecito to the furnished water pursuant to this or the Master Contract on sixty (60) days' written notice to the Agency upon the failure of the Agency and Montecito for two or more successive or cumulative years to make any of the payments required in the Master Contract to be made by the Agency to the United States upon behalf of Montecito at the times and in the manner pro-

vided if the Agency or Montecito do not pay said delinquent charges within such 60-day period. Within one day of the receipt of such notice, the Agency will deliver a true copy to Montecito. If the Agency or Montecito is prevented by legal action from making such payments, the United States may not exercise its right of termination for any failure to make such payments when such failure is occasioned by such legal action, unless by the final judgment in such legal action the Master or this contract is rendered unenforceable or void. Said termination shall be effective on January 1 following the date on which such notice is given to the Agency. Upon the effective date of such termination all obligations of the United States and all rights of the Agency and Montecito with respect to Montecito, of any nature whatsoever arising under this and the Master Contract, shall cease, but such termination shall not relieve Montecito of the obligation to make to [fol. 448] the Agency all such payments becoming due pursuant to this contract prior to the effective date of such termination. No waiver at any time by the United States of its rights with respect to default under any other matter arising in connection with this contract shall be deemed to be a waiver with respect to any subsequent default or matter.

Levy of Taxes and Assessments—Fixing of Rates and Tolls

20. (a) Montecito shall cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of Montecito to meet its obligations hereunder, to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract.

(b) The Agency shall use all powers and resources available to it by law, including the taxing power of the Agency or the power to levy special assessments to collect and pay to the United States and make payments promptly on the due dates thereof of all amounts which the Agency

by the provisions of this and the Master Contract shall be obligated to pay to the United States.

Penalty Upon Delinquency in Payment

21. Upon each charge to be paid by Montecito to the Agency pursuant to this contract which shall remain unpaid [fol. 449] after the same shall have become due and payable, there shall be imposed a penalty of one-half (½) of one (1) percent per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and Montecito hereby agrees to pay said penalty.

Montecito to Keep Books and Records and Report Crop and Other Data

22. Montecito shall establish and maintain account and other books and records, adequate to enable the Agency to furnish to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the Secretary, of information pertaining to (a) accounts and financial transactions of Montecito, to the extent that such information pertains to this and the Master Contract and operations thereunder, (b) crops raised and agricultural or livestock products produced on the land within Montecito, a report thereon for the preceding period of twelve (12) calendar months to be furnished to the Agency annually on or before December 31, or such other date or dates as may be fixed by the Agency.

Inspection of Books and Records

23. Subject to applicable California laws and regulations, the proper officers or agents of Montecito shall have full and free access at all reasonable times to the books and official records of the Agency insofar as the same [fol. 450] pertain to the matters and things provided for in this and the Master Contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the Agency shall have similar rights

in respect to the books and records of Montecito. Upon written request of Montecito to the Agency, the Agency, on behalf of Montecito, will make any and all investigations and inspections of the records of the Bureau of Reclamation permitted under Article 23 of the Master Contract and will promptly furnish Montecito with all the information thereby obtained.

Changes in Organization of Member Units

24. While the Master Contract is in effect with respect to Montecito, no change will be made in Montecito, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another political subdivision of the State, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

Lands Not to Receive Water Until Owners Thereof Execute Certain Contracts

25. (a) No water made available to Montecito, pursuant to this or the Master Contract, shall be furnished to any excess land as defined in Article 27 hereof unless the owners thereof shall have executed a valid recordable contract, in form prescribed by the United States agreeing to the provisions of Articles 25, 26 and 27 of this contract; agree- [fol. 451] ing to the appraisal provided for in Article 26 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such land at the date of the appraisal without reference to the construction of the Cachuma Unit, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water made available pursuant to this or the Master Contract, unless and until the purchase price involved in such sale is approved by the contracting officer and upon proof of fraudulent representation as to the true consideration involved in such sale the United States may instruct Montecito by written notice to refuse to deliver any water subject to this or the Master Contract to the land involved in such fraudulent sale, and

Montecito thereafter shall not deliver said water to such land.

(b) If project water furnished by the United States to a member unit pursuant to this contract reaches the underground strata of excess land owned by a large landowner who has not executed a recordable contract and the large landowner pumps such project water from the underground, the member unit will not be deemed to have furnished such water to said excess lands within the meaning of this contract, if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water to nonexcess [fol. 452] land or to excess land with respect to which a recordable contract has been executed.

VALUATION AND SALE OF EXCESS LANDS

26. (a) The value of the excess irrigable land within Montecito, held in private ownership of a large landowner as defined in Article 27 hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the Agency but the Agency shall be bound to designate as such appraiser one nominated by Montecito, and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the Agency as aforesaid are unable to agree upon the appointment of the third, the presiding justice of Division Three of the Second District Court of Appeals of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such land on account of the existing or prospective possibility of securing water from the project.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

[fol. 453] (c) The cost of the first two appraisals shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner may be appraised in like manner.

(e) Excess irrigable lands sold by a large landowner within Montecito shall not carry the right to receive water made available hereunder or under the Master Contract for such land and Montecito agrees to refuse to deliver or permit the delivery of such water to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the Agency.

(f) Montecito agrees to take all reasonable steps requested by the contracting officer and the Agency to ascertain the occurrence and conditions of all sales of irrigable land of large landowners in Montecito and annually to inform the United States and the Agency concerning the same.

(g) A true copy of this and the Master Contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the Agency and in the office of Montecito, and like copies shall be forwarded to such principal office of the Bureau of Reclamation as may be established hereafter in connection with the project and shall be made [fol. 454] available for examination during the usual office hours by all persons who may be interested therein.

Excess Land

27. (a) As used herein the term "excess land" means that part of the irrigable land within Montecito in excess of 160 acres held in the private beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife as tenants-in-common, by the entirety, as joint tenants, or as community property; the term "large landowner" means an owner of excess land and the term "nonexcess land" means all irrigable land within Montecito which is not excess land as defined herein.

(b) Each large landowner as a further condition precedent to the right to receive water for any of his excess land shall:

(i) Before any water is furnished Montecito to or for his excess land within Montecito, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions of Articles 25, 26 and 27 of this and the Master Contract and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and agreeing further that if said land is not so disposed of within a period of ten (10) years after the date of [fol. 455] the execution of said recordable contract the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large landowner; and Montecito agrees that it will refuse to deliver water to any large landowner other than for his nonexcess land within Montecito until such owner meets the conditions precedent herein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large landowner to designate his irrigable land within Montecito which he desires to designate as nonexcess land, file in the office of Montecito, in triplicate, one copy thereof to be furnished by Montecito to the Bureau of Reclamation, and one copy to the Agency, his written designation and description of lands so selected to be nonexcess land and upon failure to do so, Montecito shall make such designation and mail a notice thereof to such large landowner, and in the event Montecito fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer who will mail a notice thereof to Montecito and the large landowner. The large landowner shall become bound by any such action on the part of Montecito or the contracting officer and Montecito will deliver water only to the land within its boundaries so designated to be nonexcess land.

AMENDMENT OF FEDERAL RECLAMATION LAWS

[fol. 456] 28. In the event that the Congress of the United States repeals the so-called excess-land provisions of the

Federal reclamation laws; Articles 25, 26 and 27 of this contract will no longer be of any force or effect. In the event that the Congress amends the excess-land provisions or any other provisions of the Federal reclamation laws the Agency agrees, at the option of Montecito, insofar as the rights of other member units and the Agency are not prejudiced thereby, to amend by language to be mutually agreed upon by the United States, the Agency and Montecito the appropriate articles of this and the Master Contract, all consistently with the provisions of such repeal or amendment.

CONTRACT BETWEEN AGENCY AND UNITED STATES

29. (a) This contract between the Agency and Montecito, shall be subject to the terms of the Master Contract, and insofar as this contract involves water to be furnished by the United States pursuant to the Master Contract, Montecito agrees to the provisions of the Master Contract.

(b) In the event that within one year after the execution of the Master Contract, there have not been executed contracts between the Agency and member units which in the aggregate will provide for the disposition of at least 8,100 acre-feet per year of the water to be made available pursuant to the Master Contract by the United States during the first period thereof, then this contract shall be of no [fol. 457] force or effect. If this and the Master Contract become effective but not all of the proposed member units named in sections (i) to (n), both inclusive, of Article 9 hereof execute such contracts with the Agency, then any provision hereof relating to any such proposed member unit not executing such an Agency contract shall be disregarded and shall be given no force or effect and shall not create any right or liability in favor of or against Montecito, the United States, the Agency, any governmental unit, city, district, person, corporation or association whether a party hereto or not.

EXISTING WATER RIGHTS

30. Subject to agreement between the Agency and Montecito:

(a) The water from the Santa Ynez River to be conerved, distributed and used by means of the Cachuma Jnit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, and to be furnished Montecito under this contract, and to be furnished any member nit by the Agency shall be water which, at the time of the ppropriation thereof by the United States, was or shall e available for appropriation under the laws of the State f California. The established water rights of Santa Barara and Montecito, whether such rights are presently ully developed or not, are hereby recognized by the gency, and shall be preserved notwithstanding the execuion of this contract or of any provision of this contract to fol. 458] the contrary, or any operation or use hereunder.

(b) Santa Barbara and Montecito shall not be required o deliver or transfer to the United States, the Agency, the achuma Unit or to any person or entity entitled to water herefrom any water or water rights to which Santa Barara or Montecito is entitled under their established water ights.

(c) The Agency hereby recognizes and agrees not to ake, restrict, impair or interfere with any or all of said resently established rights to water for present use and ature development based upon such rights.

ONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

31. The expenditure of any money or the performance f any work or service by the United States provided for in ie Master Contract which may require appropriations of oney by Congress or the allotment of funds, shall be conngent upon such appropriations or allotments being made. he failure of Congress so to appropriate funds or the failre of an allotment of funds shall not relieve Montecito rom any obligations under this contract and no liability all accrue to the Agency in case such funds are not so ppropriated or alloted: *Provided*, That in the event that ater deliveries are halted or curtailed as a result of such fol. 459] failure to appropriate or allot funds, the obliation of Montecito to make payments pursuant to this ontract shall be reduced to the extent of such halting or urtailment of service.

FAILURE OF UNITED STATES TO PERFORM

32. The Agency shall not be liable for failure to perform any portion of this contract to the extent that such failure is caused by the failure of the United States to perform any obligation imposed on the United States by the Master Contract: *Provided*, That the obligations of Montecito hereunder shall be reduced to the extent that the Agency is prevented from performing as aforesaid: *Provided, further*, That the Agency shall diligently and promptly pursue all rights and remedies available to it to enforce the rights of the Agency and its member units against the United States under the Master Contract relative to such failure to perform.

NOTICES

33. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given when deposited in the United States Post Office at Santa Barbara in a postage prepaid registered envelope addressed to the "Santa Barbara County Water Agency, Court House, Santa Barbara, California" if the Agency is being given notice, and to "Montecito County Water District, 583 San Ysidro Road, Montecito, California" if Montecito is being given notice, or such other addresses as [fol. 460] from time to time may be designated by either party in a written notice to the other: *Provided*, however, That this Article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT

34. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties and Montecito may assign any or all of its interests herein subject to the provisions of Section 5.6 of the Santa Barbara County Water Agency Act, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the Secretary. In the case of such an assignment by Montecito, at the option of

the Agency, Montecito may be required to guarantee payments by the assignee member unit of any obligation owing the Agency in connection with the assigned interest. No sale or other disposal by Montecito for use outside of Montecito or another member unit of any water, or the right to the use thereof, furnished to Montecito pursuant to this contract, shall be valid.

DUTIES OF AGENCY

35. The Agency hereby covenants and agrees to promptly and completely fulfill its obligations under this and the Master Contract and to apply and pay to the United States for credit against obligations of the Agency for Montecito [fol. 461] under the Master Contract, all sums received by the Agency from Montecito hereunder.

ASSURANCES RELATING TO VALIDITY OF CONTRACTS—LITIGATION

36. Promptly after the execution and delivery of this contract the Agency shall file or cause to be filed and prosecute or cause to be prosecuted to a final decree, including any appeal therefrom, an action at law, or in equity or a special proceeding for the judicial examination, approval and confirmation of the proceedings had for the organization of the Agency and the proceedings of the Board of Directors of the Agency and the proceedings of the Agency leading up to and including the making of this contract and the validity of the provisions thereof. Prior to instituting or defending any action in law or equity or any special proceeding, the Agency shall give written notice thereof to Montecito in order that Montecito may take such measures as Montecito deems necessary to protect Montecito's interests, if any, in such action of proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year first hereinabove written.

SANTA BARBARA COUNTY WATER AGENCY

By T. A. TWITCHELL
Chairman, Board of Directors

Attest:

J. E. Lewis (seal)
Clerk of said Agency

Montecito County Water District

By Harry P. Drake
President, Board of Directors

[fol. 462] Attest:

Martha G. Evans
Secretary of said
District

(Seal of Montecito
County Water District)

[fol. 613] In the Superior Court of the State of California in and for the County of Santa Barbara

Answer of Defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall—Filed August 18, 1950

Come now the defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall, and answering plaintiff's complaint on file herein, and the several causes of action therein alleged, admit, deny and allege as follows:

Answer to First Cause of Action

I.

Answering paragraph I of plaintiff's alleged first cause of action, these answering defendants admit that the Senate and Assembly of the Legislature voted in favor of an Act known as "The Santa Barbara County Water

Agency Act", being Chapter 1501 of the Statutes of the 56th Session of the Legislature of the State of California (1945 California Statutes, Chapter 1501, pp. 2780-2801), and a purported Act of the Legislature of the State of California, being Chapter 12 of the Statutes of the State of California of the 1949 Regular Session of the Legisla- [fol. 614] ture of the State of California (1949 California Statutes, Chapter 12, pp. 18 to 27), and that the Governor signed the same, but deny each and every other allegation, matter, inference and thing in said paragraph I contained.

II.

Answering paragraph II of the plaintiff's alleged first cause of action, these answering defendants admit that the two Acts mentioned and referred to were enacted and approved, but deny each and every other allegation, matter, inference and thing in said paragraph II contained.

III.

Answering paragraph III of plaintiff's alleged first cause of action, these answering defendants deny that said Santa Barbara County Water Agency was ever legally constituted or validly created, or that said Agency has ever had a legally constituted or validly created Board of Directors or any officer or officers.

IV.

Answering paragraph V of plaintiff's alleged first cause of action, these answering defendants admit that the negotiations referred to were carried on as alleged, and that a document in the form of Exhibit "A" attached to plaintiff's complaint was signed as indicated by said Exhibit "A", but deny each and every other allegation, matter, inference and thing in said paragraph V contained.

Further answering said paragraph V, these answering [fol. 615] defendants deny that the United States of America or the said Agency ever has had or now has any water to furnish or to sell, as alleged in said paragraph V, or otherwise.

V.

Answering paragraph VI of plaintiff's alleged first cause of action, these answering defendants admit that the purported members of the Board of Directors of said Agency met at the time and place alleged, and voted in favor of said purported Resolution No. 9 in the form of Exhibit "B" attached to plaintiff's complaint herein, but deny each and every other allegation, matter, inference and thing in said paragraph VI contained, and further deny that any valid finding was made for the reason that there was no evidence to support the alleged findings, or any of them, set forth in said Resolution No. 9.

VI.

Answering paragraph VII of plaintiff's alleged first cause of action, these answering defendants admit that the document mentioned and referred to in said paragraph VII was signed, sealed and delivered as alleged, but deny each and every other allegation, matter, inference and thing in said paragraph VII contained.

VII.

Answering paragraph VIII of plaintiff's alleged first cause of action, these answering defendants admit that the document mentioned and referred to in said paragraph VIII [fol. 616] was signed and delivered on the date and by the persons alleged, but deny each and every other allegation, matter, inference and thing in said paragraph VIII contained.

VIII.

Answering paragraph IX of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph IX, the purported members met and voted in favor of said Resolution No. 7, in the form as attached as Exhibit "C" to plaintiff's complaint herein, but deny each and every other allegation, matter, inference and thing in paragraph IX contained.

IX.

Answering paragraphs XII and XIII of plaintiff's alleged first cause of action, these answering defendants deny that the alleged Master Contract ever has been or is now valid or legal, or that it ever was lawfully authorized or executed.

X.

Answering paragraph XIV of plaintiff's alleged first cause of action, these answering defendants admit that the members of the Board of Directors met at the time and place alleged in said paragraph XIV, and voted in favor of the Resolution containing provisions as alleged in said paragraph XIV, but deny each and every other allegation, matter, inference and thing in said paragraph XIV contained.

[fol. 617] XI.

Answering paragraph XV of plaintiff's alleged first cause of action, these answering defendants admit that the individuals mentioned and referred to in said paragraph XV signed and affixed the Seal referred to, to the documents referred to, on the date alleged in said paragraph XV, but deny each and every other allegation, matter, inference and thing in said paragraph XV contained.

XII.

Answering paragraph XVI of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XVI an election was held and the electors voted in favor of the adoption of the Ordinance referred to and alleged, but deny each and every other allegation, matter, inference and thing in said paragraph XVI contained.

XIII.

Answering paragraph XVII of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XVII, the officials of said City of Santa Barbara signed and delivered the docu-

ment, of which Exhibit "D" attached to plaintiff's complaint is a copy, but deny each and every other allegation, matter, inference and thing in paragraph XVII contained.

[fol. 618]

XIV.

Answering paragraph XVIII of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph the electors of said Carpinteria County Water District voted in favor of the Ordinance alleged, but deny each and every other allegation, matter, inference and thing in said paragraph XVIII contained.

XV.

Answering paragraph XIX of plaintiff's alleged first cause of action, these answering defendants admit that the Board of Directors of said Carpinteria County Water District met as alleged, and voted in favor of the Resolution alleged, but deny each and every other allegation, matter, inference and thing in said paragraph XIX contained.

XVI.

Answering paragraph XX of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XX the officers of said Carpinteria County Water District signed and dated the documents in the form of Exhibit "E" attached to plaintiff's complaint, but deny each and every other allegation, matter, inference and thing in said paragraph XX ntained.

XVII.

Answering paragraph XXI of plaintiff's alleged first cause of action, these answering defendants admit that on [fol. 619] the date alleged in said paragraph XXI the electors of said Goleta County Water District voted in favor of the Ordinance alleged in said paragraph XXI, but deny each and every other allegation, matter, inference and thing in said paragraph XXI contained.

XVIII.

Answering paragraph XXII of plaintiff's alleged first cause of action, these answering defendants admit that the Board of Directors of Goleta County Water District met as alleged in said paragraph XXII and voted in favor of the Resolution also alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph XXII contained.

XIX.

Answering paragraph XXIII of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXIII the officers of said Goleta County Water District signed and dated the document in the form of Exhibit "F" attached to plaintiff's complaint, but deny each and every other allegation, matter, inference and thing in said paragraph XXIII contained.

XX.

Answering paragraph XXIV of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXIV the electors of Montecito County Water District voted in favor of the [fol. 620] Ordinance alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph XXIV contained.

XXI.

Answering paragraph XXV of plaintiff's alleged first cause of action, these answering defendants admit that the Board of Directors of the Montecito County Water District met as alleged and voted in favor of the Resolution alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph XXV contained.

XXII.

Answering paragraph XXVI of plaintiff's alleged first (sic) of action, these answering defendants admit that on

the date alleged in said paragraph XXVI the officers of Montecito County Water District signed and dated the document in the form of Exhibit "G" attached to plaintiff's complaint, but deny each and every other allegation, matter, inference and thing in said paragraph XXVI contained.

XXIII.

Answering paragraph XXVII of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXVII the electors of Summerland County Water District voted in favor of the Ordinance alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in [fol. 621] said paragraph XXVII contained.

XXIV.

Answering paragraph XXVIII of plaintiff's alleged first cause of action, these answering defendants admit that the Board of Directors of the Summerland County Water District met as alleged in said paragraph and voted in favor of the Resolution alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph XXVIII contained.

XXV.

Answering paragraph XXIX of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXIX, the officers of Summerland County Water District signed and dated the document in the form of Exhibit "H" attached to plaintiff's complaint, but deny each and every other allegation, matter, inference and thing in said paragraph XXIX contained.

XXVI.

Answering paragraphs XXXI, XXXII and XXXIII of plaintiff's alleged first cause of action, these answering defendants admit that the documents signed by the City of Santa Barbara and the said four county water districts are in the forms shown by Exhibits "D" to "H" inclusive,

attached to plaintiff's complaint herein, but deny each and every other allegation, matter, inference and thing in said paragraphs XXXI, XXXII and XXXIII contained.

[fol. 622]

XXVII.

Answering paragraph XXXIV of plaintiff's alleged first cause of action, these answering defendants deny each and every allegation, matter, inference and thing in said paragraph XXXIV contained.

XXVIII.

Answering paragraph XXXV of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXXV the members of the purported Board of Directors of said alleged Santa Barbara County Water Agency voted in favor of said Resolution No. 13 referred to in said paragraph XXXV, but deny each and every other allegation, matter, inference and thing in said paragraph XXXV contained.

Answer to Second Cause of Action

I.

Answering paragraph I of plaintiff's alleged second cause of action, these answering defendants hereby refer to their answer to plaintiff's alleged first cause of action herein, and by such reference incorporate their said answer herein as a portion of their answer to plaintiff's alleged second cause of action the same as though said answer were specifically set forth in full at this point.

[fol. 623]

II.

Answering paragraph VI of plaintiff's alleged second cause of action, these answering defendants admit that the Board of Directors of said Carpinteria County Water District met as alleged in said paragraph, and that the members of said Board voted in favor of the Ordinance No. 1 referred to in said paragraph and purporting to call an election for the purpose alleged in said paragraph, but defendants deny each and every other allegation, matter, inference and thing in said paragraph VI contained.

III.

Answering paragraph IX of plaintiff's alleged second cause of action, these answering defendants admit that the Board of Directors of said Carpinteria County Water District met as alleged in said paragraph and canvassed the returns of the election and declared the result of the election and the votes case (sic) in favor and against the proposition in the numbers as alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph IX contained.

ANSWER TO THIRD CAUSE OF ACTION

I.

Answering paragraph I of plaintiff's alleged third cause of action, these answering defendants refer to their an- [fol. 624] swer to plaintiff's alleged first cause of action, and by such reference incorporate and adopt the same at this point as a part of their answer to plaintiff's alleged third cause of action.

II.

Answering paragraph VI of plaintiff's alleged third cause of action, these answering defendants admit that the Board of Directors of said Goleta County Water District met as alleged in said paragraph, and that the members of said Board voted in favor of the Ordinance No. 1 referred to in said paragraph and purporting to call an election for the purpose alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph VI. contained.

III.

Answering paragraph IX of plaintiff's alleged third cause of action, these answering defendants admit that the Board of Directors of said Goleta County Water District met as alleged in said paragraph and canvassed the returns of the election and declared the result of the election and the votes cast in favor of and against the proposition in the numbers as alleged in said paragraph, but deny each

and every other allegation, matter, inference and thing in said paragraph IX contained.

[fol. 625] ANSWER TO FOURTH CAUSE OF ACTION

I.

Answering paragraph I of plaintiff's alleged fourth cause of action, these answering defendants hereby refer to their answer to plaintiff's alleged first cause of action, and by such reference incorporate and adopt said answer at this point as a portion of their answer to plaintiff's alleged fourth cause of action.

II.

Answering paragraph VI of plaintiff's alleged fourth cause of action, these answering defendants admit that the Board of Directors of said Montecito County Water District met as alleged in said paragraph, and that the members of the said Board voted in favor of the Ordinance No. 26 referred to in said paragraph, and purporting to call an election for the purpose alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph VI contained.

III.

Answering paragraph IX of plaintiff's alleged fourth cause of action, these answering defendants admit that the Board of Directors of said Goleta County Water District met as alleged in said paragraph and canvassed the returns of the election and declared the result of the election and the votes cast in favor of and against the proposition in the numbers as alleged in said paragraph, but deny each [fol. 626] and every other allegation, matter, inference and thing in said paragraph IX contained.

ANSWER TO FIFTH CAUSE OF ACTION

I.

Answering paragraph I of plaintiff's alleged fifth cause of action, these answering defendants hereby refer to their

answer to plaintiff's alleged first cause of action herein, and by such reference adopt the same as a part of their answer to plaintiff's alleged fifth cause of action, the same as though specifically set forth at this point.

II.

Answering paragraph VI of plaintiff's alleged fifth cause of action, these answering defendants admit that the Board of Directors of said Summerland County Water District met as alleged in said paragraph, and that the members of the said Board voted in favor of the Ordinance No. 1 referred to in said paragraph, and purporting to call an election for the purpose alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph VI contained.

III.

Answering paragraph IX of plaintiff's alleged fifth cause of action, these answering defendants admit that the Board of Directors of said Summerland County Water [fol. 627] District met as alleged in said paragraph, and canvassed the returns of the election and declared the result of the election, and the votes cast in favor of and against the proposition in the numbers as alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph IX contained.

ANSWER TO SIXTH CAUSE OF ACTION

I.

Answering paragraph I of plaintiff's alleged sixth cause of action, these answering defendants refer to plaintiff's alleged first cause of action and by such reference incorporate and adopt the same at this point as a portion of their answer to plaintiff's sixth cause of action.

II.

Answering paragraph VI of plaintiff's alleged sixth cause of action, these answering defendants admit that the City Council of said City of Santa Barbara met as alleged in

said paragraph, and that the members of the said City Council voted in favor of the Ordinance No. 2253 referred to in said paragraph, and purporting to call an election for the purpose alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph VI contained.

[fol. 628] III.

Answering paragraph IX of plaintiff's alleged sixth cause of action, these answering defendants admit that the City Council of said City of Santa Barbara met as alleged in said paragraph, and canvassed the returns of the election and declared the result of the election and the votes cast in favor of and against the proposition in the numbers as alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph contained.

As a Further, First, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

The purported "Master Contract" referred to in the complaint states, in Article 30 thereof, that:

"Subject to agreement or the power of the United States of eminent domain:

(a) the water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma [fol. 629] Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the Laws of the State of California."

II

Plaintiff has not appropriated or obtained any permit to appropriate water from the Santa Ynez River, and has

no right whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the boundaries of any "member unit" of the Agency, or elsewhere.

III

Defendants are informed and believe and therefore allege that plaintiff or the United States has not acquired any water by agreement with any holder of water rights, and has not acquired any water rights by agreement under which water may be diverted from land in the Santa Ynez River Valley to which it is appurtenant, and has not acquired any water rights which are not appurtenant to land in the Santa Ynez River Valley.

IV

Defendants are informed and believe and therefore allege that there is no water of the Santa Ynez River which [fol. 630] is not required to satisfy and supply the rights and needs of the owners of lands which are riparian to the said river, the rights and needs of owners of land for which water rights have been acquired by appropriation or prescription, the rights and needs of the owners of lands overlying percolating waters which depend upon the flow of the Santa Ynez River for replenishment and supply, and the rights and needs of the owners of land for which water from such percolating waters have been acquired by appropriation or prescription. Further on such ground defendants allege that if there is any right to salvage excess waters of flash floods, or other floods, the right belongs to and should be exercised solely for the benefit of land owners holding riparian water rights and owners of land overlying percolating waters fed by and dependent upon the Santa Ynez River.

V

Any interruption in the flow of the Santa Ynez River will cut down and substantially decrease the amount of water obtainable for owners of lands and owners of said

overlying percolating waters fed by and dependent upon the waters of the said stream.

As a Further, Second, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

[fol. 631]

I

"The Santa Barbara County Water Agency Act" referred to in the complaint provides that boundaries and territory of the said district are all the territory within the County of Santa Barbara. It provides that the said Agency shall have power to construct or acquire and to operate local improvements to control, conserve and make use of storm waters, except that it shall not have power to construct, acquire or operate works for the control of flood waters except for the purpose of making available water for beneficial use of land or inhabitants in the Agency. It provides that the Agency shall have power to levy taxes for the purpose of paying any obligation of the Agency and to accomplish the purposes of the Agency, to create bonded indebtedness for the payment of the cost of acquisition or construction of any works for any purposes of the Agency, and to levy a tax or assessment each year on all the taxable property in the Agency to pay the principal and interest of such bonds, and to levy special assessments against property in the Agency to pay any obligation of the Agency or to accomplish any purpose of the Agency.

II

In adopting the said statute, the Legislature made express findings in Section 17 thereof, but did not make any finding or determination that the lands of defendants, or all lands within the boundaries of the district or Agency, [fol. 632] will be benefited by works or operations of the Agency, and did not adopt or approve or make any findings on any plan of improvement or development to be constructed or operated at any cost or expense of the

Agency which would benefit the lands of defendants or any lands in the eastern or northern portion of the district or Agency.

In geography the land within the boundaries of the district lies generally within separate geographical areas and watersheds, roughly as follows:

The upper Santa Ynez River water-shed lying roughly above the confluence of La Zaca Creek and Nojoqui Creek: the lower Santa Ynez River water-shed; San Antonio Creek water-shed; Sisquoc River water-shed; Cuyama River-Santa Maria River Water-shed which lies partly in Santa Barbara County and partly in San Luis Obispo County; the coastal plain from Carpinteria to Gaviota; the coastal area in the vicinity of Point Concepcion and Point Arguello; the upper Cuyama Valley, including extensive oil fields therein, lying partly within Santa Barbara County and partly within San Luis Obispo County.

III

The said statute was planned and enacted primarily, if not entirely, to provide an organization with which the Secretary of Interior might contract in pursuance generally under the Act of Congress of June 17, 1902 (32 Stat. 388), and Acts Amendatory thereof or supplemental thereto, [fol. 633] collectively referred to as "the Federal reclamation laws"; for the payment of construction costs of the Cachuma Project for the salvaging of storm waters in the upper Santa Ynez River and the utilization of such waters in the communities and on the lands in the coastal plain, such as Carpinteria, Summerland, Montecito, Santa Barbara and Goleta areas, and for the transportation of water to such areas and the development of water in the tunnel known as Tecolote Tunnel.

The said project, or projects, or any project contemplated or possible under the provisions of the said Act, would confer no benefit whatever on the lands of defendants, or any of them, or on any lands outside of the said plains from Carpinteria to Goleta. A finding or determination that the lands of defendants, or any of them, or lands outside the said coastal plain area would be benefited by said

project, or any project contemplated or possible under the said statute, would be contrary to any rational view of the facts since the lands outside of said coastal plain area plainly could not by any fair or proper view of the facts be beneficial. The said Act in Section 10.1 thereof provides for a limit of taxation for purposes exclusive of payments on bonded indebtedness and contractual liabilities authorized by vote of the electors, and exclusive of indebtedness payable by special assessment, and in Section 9.1 thereof provides for a limitation on the amount of [fol. 634] bonded indebtedness. The said Act in Section 10.2 thereof provides for contributions to member units, and the Agency in its purported contracts with member units alleged in the complaint has purported to exercise such right, and to contribute for a period of forty years a substantial part of the amount which can be raised by taxation authorized by said Section 10.1. The amount of money available within the debt limit provided for by the Statute is not sufficient to provide for the construction of any improvements or facilities which could effectively develop or conserve water for, or otherwise benefit, any lands outside the limits of the member units referred to in the complaint.

IV

The said Santa Barbara County Water Agency Act is unconstitutional in that it is in violation of the 14th Amendment to the Constitution of the United States of America.

As a Further, Third, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

The purported "Master Contract" referred to in the complaint provides in Article 20(b) thereof that the Agency [fol. 635] shall use all powers and resources available to it under The Santa Barbara County Water Agency Act, including the taxing power of the Agency or the power to levy special assessments, to collect and pay to the United

States all amounts which the Agency by the provisions of the said contract shall be obligated to pay to the United States.

II

The said purported contract in Article 13(b) thereof provides that the Agency shall pay the United States for all water furnished under the contract to member units at the water rates provided for in said purported contract. Said purported contract does not require that the Agency shall charge or collect from the member units at such or any particular water rates, and the Agency in its contracts with the member units alleged in the complaint has agreed to charge and collect from member units for water furnished under said contracts at rates less than those provided for in the purported "Master Contract", and apparently assumes the right to determine what part of the water rates prescribed by the "Master Contract" shall be paid by water rates charged to and collected from member units and what part thereof shall be paid from revenues obtained by taxation under the powers provided for in Section 10.1 of the Agency Act.

III

The said project provided for by the purported "Master [fol. 636] Contract" or anything done under said contract, would confer no benefits whatever on the lands of these answering defendants, or any of them, or on any lands outside of the coastal plain from Carpinteria north through Goleta. That the defendants' lands are not, nor is any thereof, located, in whole or in part, within the boundaries of any one or more of the member units mentioned in plaintiff's complaint.

IV

That if the legislature of the State of California by implication has made a finding that all of the property within the boundaries of the Agency as defined in said Agency Act will be uniformly or otherwise benefited by the construction or acquisition of works authorized and

contemplated by the said Act or the said "Master Contract" or by the maintenance or operation of said works, such a finding is purely fictitious and palpably arbitrary and contrary to any rational view of the facts and not based on any real or actual evidence or investigation or upon any comprehensive or other plan of improvement.

For a Further, Fourth, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

[fol. 637] I

The purported contracts between the Agency and the member units referred to in the complaint, and attached as Exhibits "D" to "H", inclusive to the complaint herein, provide in Article 13 that the Agency will contribute to the member units each year toward the payment of the water rates for water furnished to member units, the aggregate amount of $100,000.00, or an amount which can be financed by the total Agency funds available for the purpose, plus funds raised by a tax levy, not exceeding 10¢ on each $100.00 of assessed valuation of all taxable property in the Agency. The said Article provides, in effect, that the Agency will levy taxes against all taxable property within the boundaries of the Agency for the purpose of raising money to make such contribution.

II

The said Cachuma project for the furnishing of water therefrom to member units of the Agency would confer no benefits whatever on the lands of the answering defendants, or any of them, or on any lands within the boundaries of the Agency outside the boundaries of the said member units.

The said contribution provided for in the said contracts between the Agency, its member units, and the taxation of the property of the answering defendants, and of the owners of lands outside the boundaries of the member units, is in violation of Section 31 of Article IV and Section 12 [fol. 638] of Article XI of the California Constitution; and

Section 10.2 of the Agency Act, which appears to authorize such contributions, is in violation of the 14th Amendment of the Constitution of the United States.

As a Fifth, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

Article 13(c) and Article 18 of the purported "Master Contract" provide that the Agency will collect from each member unit for the water each member unit is required to take under the contracts alleged in the complaint, and provides that the Agency will exercise the powers granted by Section 10.3 of the Agency Act to levy and collect taxes on all taxable property of any delinquent member unit required to pay for the water which the said contracts require that the member unit shall take.

Articles 13(a), 13(f), 18 and 20 of each of the member unit contracts, Exhibits "D" through "H" of the complaint, provide that each member unit will pay for all water which is allocated to it under the purported "Master Contract", whether it takes it, or wants it, or not, and that it will exercise all its powers under the County Water District [fol. 639] Act to collect the amount payable to the Agency and will cause to be levied and collected all necessary taxes and assessments.

Article 18 of each member unit contract provides that each member unit will pay the Agency the water charges under the contract, notwithstanding any default of individual water users, and provides that the obligations of each member unit arising out of or pursuant, or incidental to the purported "Master Contract" shall constitute general obligations of the member units. The California Water Code, particularly in Section 31791 thereof provides that general obligations are payable by a general tax.

II

Said contracts with member units, Exhibits "D" through "H" of the complaint, provide that the Agency will con-

tribute to member units for the payment of water charges in the aggregate amount of $100,000.00 per year, or an amount which may be raised with a tax levy at the rate of 10¢ per $100.00 of assessed valuation of all property within the boundaries of the Agency. The purported "Master Contract" in each of the said member unit contracts, requires that the Agency and each member unit shall maintain an organization for its administration, and shall raise the funds necessary for such purpose by taxation of all taxable property within their respective limits.

[fol. 640] III

Articles 25 to 29 of the purported "Master Contract", and Articles 25 to 29 of each of the member unit contracts provide that no water furnished under the said contracts shall be made available for any parcel of land in excess of 160 acres held in private ownership of a single individual unless the owner thereof shall have executed a contract agreeing to sell all land in excess of 160 acres at valuations fixed as provided for in said contracts.

IV

There exists within the boundaries of the said county water districts referred to in the complaint parcels of land in private ownership of a single individual, containing more than 160 acres of irrigable land. The owners of said parcels are denied the right to receive water on the terms and conditions available to owners of tracts containing 160 acres or less, and are subjected to liability for taxes without receiving any of the benefits for which the taxes are levyable.

As a Further, Sixth, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

[fol. 641] I

There are included within the boundaries of each county water district referred to in the complaint parcels of land which are not substantially or directly benefited by being

in the district, or by the availability of water as proposed by the purported "Master Contract" and the member unit contracts.

II

The Water Code of California, particularly in Part 8 of Division 12 thereof provides procedures by which the Board of Directors of a district may exclude from the district tracts of land not substantially or directly benefited by being in the district, and procedures by which districts may be consolidated and by which districts may be dissolved.

III

The purported "Master Contract" in Article 24 thereof, and each member unit contract, Exhibits "D" through "H" of the complaint, in Article 24 thereof, provide that, while the purported "Master Contract" between the Agency and the United States is in effect, with respect to a member unit, no change will be made in the member unit, either by inclusion or exclusion of land, by partial or total consolidation or merger with any political subdivision of the State, by proceedings to dissolve or otherwise, except upon the written assent of the United States, through the [fol. 642] contracting officer provided for in the said contracts. The Water Code in Section 23202 thereof purports to provide, in effect, that land which is not substantially or directly benefited by being included in a county water district, shall not be excluded unless the Secretary of the Interior agrees to it.

IV

The said provisions of the said contracts and said provision of the Water Code violate the 14th Amendment of the Constitution of the United States and constitute an unlawful delegation of legislative and local power in violation of Section 1 of Article IV of the California Constitution.

As a Further, Seventh, Separate, and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

Section 10.3 of the said Agency Act provides as follows:

"The Agency shall have the power to levy a special ad valorem tax on all the taxable property in any member unit, whenever any such member unit is delinquent in any payment due the Agency by such [fol. 643] member unit under any contract entered into by them. Such tax shall be levied only at a rate sufficient to raise an amount equal to the amount delinquent."

II

The purported "Master Contract" provides in Article 18 and 20(b) thereof that the Agency agrees to use all of the powers and resources available to it under the said Agency Act to collect the taxes necessary for it to meet its obligations to the United States under the contract.

III

The said provisions of the Agency Act and of the said purported "Master Contract" are in violation of Section 12 of Article XI of the Constitution of the State of California.

For a Further, Eighth, Separate, and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

It is provided in Subdivision (c) (2) of Section 9 of the Reclamation Project Act of 1939, referred to in said "Master Contract", alleged in plaintiff's complaint, that the Secretary of Interior is authorized to enter into con- [fol. 644] tracts to furnish water "for municipal water

supply purposes or miscellaneous purposes", provided that any such contract:

> "* * * (2) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year."

II

That Section 9(e) of said Reclamation Project Act of 1939 mentioned in Article 7 of said "Master Contract" is in the words and figures following:

> "In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short or long-term contracts to furnish water for irrigation purposes. Each such contract [fol. 645] shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation, and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d)."

III

That the provisions contained in said Sections 9 (c)(2) and 9 (e) stating that each such contract shall be at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the [fol. 646] annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, constitutes an unconstitutional delegation of powers to the Secretary of the United States Department of Interior, for the reason that the said statute (a) furnishes no guide for the fixing of such rates or shares, (b) establishes no limitation as to such rates or shares, and (c) by its terms vests in the Secretary of Interior an unlimited, arbitrary and uncontrolled discretion, subject to whim and caprice, and subject to variation as to such rates and charges, as the personnel of the office of Secretary of the Interior may change from time to time, all in violation of Section 1 of Article I of the Constitution of the United States of America, and the said "Master Contract" lacks mutuality.

Wherefore, defendants pray judgment that plaintiff take nothing by its action herein; that defendants have judgment declaring their rights, obligations and duties with respect to and under the Santa Barbara County Water Agency Act and the purported "Master Contract" and purported member unit contracts referred to in plaintiff's complaint herein; that the above entitled Court determine and declare that said Agency Act and each and all of said contracts are invalid in so far as they apply to the defendant's lands and taxable property, and lands and taxable property outside of the boundaries of the said member [fol. 647] units; that the plaintiff, its agents and servants, be enjoined from proceeding under said contracts, or any of them, and from constructing, acquiring, operating or maintaining or participating in the construction, acquisition, operation or maintenance of said Cachuma Project, and from levying any tax or assessment or creating any obligation against the lands or taxable property of the defendants, or any of them, or the lands and taxable property outside the boundaries of the member units; for

defendants' costs herein laid out and expended, and such other and further relief as to the Court may seem just, equitable or proper.

Sherman Anderson, Alex W. Davis and W. P. Butcher, By s/ Sherman Anderson, Attorneys for Defendants.

[File endorsement omitted]

[fol. 648] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

AMENDMENT TO ANSWER OF DEFENDANTS MAURICE A. BALAAM, TED R. HOLDEN, WILLIAM C. SUDDEN, W. G. MOORE, R. E. SUDDEN, CHARLES E. SUDDEN and L. H. CRANDALL

—Filed December 7, 1950

Defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall, with leave of court heretofore given, amend their answer to the complaint herein in the particulars herein set forth, and admit, deny and allege as follows:

Second Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Second Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

Third Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Third Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 [fol. 649] and 23224 of the Water Code of California.

Fourth Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Fourth Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

Fifth Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Fifth Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

The Further First, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged Is Amended to Read as Follows:

I

The purported "Master Contract" referred to in the complaint states, in Article 30 thereof, that:

"Subject to agreement or the power of the United States of eminent domain:

[fol. 650] (a) the water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the Laws of the State of California".

II.

Plaintiff or the United States or the Bureau of Reclamation has not appropriated or obtained any permit to appropriate water from the Santa Ynez River, and has no right

whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the boundaries of any "member unit" of the Agency, or elsewhere. The City of Santa Barbara or any of the County Water Districts referred to in the complaint has not appropriated or obtained any permit to appropriate water from the Santa Ynez River and has no right whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the boundaries of the City or within the boundaries of any of the said County Water Districts, except that the City of Santa Barbara and Montecito County Water District have certain water rights under which water has been and is [fol. 651] being taken at diversion points upstream from the Cachuma reservoir site in limited quantities which have been fully developed and are being fully utilized by said City and Water District respectively. No water has been appropriated and no water right has been acquired for the use or benefit of any land or use within the City of Santa Barbara or any of the said County Water Districts except such as may have been acquired by virtue of the water rights of the City of Santa Barbara and Montecito County Water District above referred to.

III.

Defendants are informed and believe and therefore allege that with the exceptions noted in paragraph II above, the plaintiff or the United States or the City of Santa Barbara or any of the County Water Districts referred to in the complaint or any land or water user within the City or any of said County Water Districts has not acquired any water by agreement with any holder of water rights, and has not acquired any water rights by agreement under which water may be diverted from land in the Santa Ynez River Valley to which it is appurtenant, and has not acquired any water rights which are not appurtenant to land in the Santa Ynez River Valley.

IV.

Defendants are informed and believe and therefore allege that there is no water of the Santa Ynez River which is not required to satisfy and supply the rights and needs of the [fol. 652] owners of lands which are riparian to the said river, the rights and needs of owners of land for which water rights have been acquired by appropriation or prescription, the rights and needs of the owners of lands overlying percolating waters which depend upon the flow of the Santa Ynez River for replenishment and supply, and the rights and needs of the owners of land for which water from such percolating waters have been acquired by appropriation or prescription. Further on such ground defendants allege that if there is any right to salvage excess waters of flash floods, or other floods, the right belongs to and should be exercised solely for the benefit of land owners holding riparian water rights and owners of land overlying percolating waters fed by and dependent upon the Santa Ynez River.

V.

Any interruption in the flow of the Santa Ynez River will cut down and substantially decrease the amount of water obtainable for owners of lands and owners of said overlying percolating waters fed by and dependent upon the waters of the said stream.

As a Further Ninth Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Allege as Follows:

[fol. 653] I.

The master contract referred to in the complaint is proposed by the United States by the Bureau of Reclamation, and recites that it is made, in pursuance of the reclamation laws of the United States. The said reclamation laws provide that the right to the use of waters acquired under the provisions of the reclamation laws shall be appurtenant to the land irrigated.

II.

The said master contract provides in Paragraph 11 and other paragraphs thereof that the United States shall furnish water to Member Units of the Agency and provides in Section 14 that the United States reserves the right to all waste, seepage and return flow water derived from water so furnished which escapes or discharges beyond the boundaries of the Agency.

Each of the contracts between the Agency and the Member Units referred to in the complaint provides that the water for Member Units and Water Users therein shall be "furnished" pursuant to the provisions of the said master contract and also provides that all waste, seepage and return flow water derived from water so furnished which escapes or discharges beyond the boundaries of the Agency is reserved to the United States.

The said provisions of the master contract are invalid and void and beyond the powers granted by Congress to the [fol. 654] Secretary of Interior as the contracting agent of the United States under the reclamation laws. The said contracts of the Agency and of said Member Units are invalid and void under California law.

Wherefore, defendants pray for judgment and relief as prayed for in their original answer herein,

Sherman Anderson, Alex W. Davis and W. P. Butcher, by s/ Sherman Anderson, Attorneys for Defendants.

[fol. 662] In the Superior Court of the State of California in and for the County of Santa Barbara

Amendment to Answer of Defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall—Filed January 3, 1951

Defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden

and L. H. Crandall, with leave of court heretofore given, amend their answer to the complaint herein in the particulars herein set forth, and admit, deny and allege as follows:

Second Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Second Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

Third Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Third Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 [fol. 663] and 23224 of the Water Code of California.

Fourth Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Fourth Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

Fifth Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Fifth Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

The Further First, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged Is Amended to Read as Follows:

I

The Master Contract between the United States and The Santa Barbara County Water Agency provides that it is made in consideration of the mutual covenants therein contained. The said contract provides that the United [fol. 664] States, to the extent that water is available therefor, will furnish water to Member Units and that no liability shall accrue against the United States on account of water not being available for furnishing or delivery under the said contract.

The purported "Master Contract" referred to in the complaint states, in Article 30 thereof, that:

> "Subject to agreement or the power of the United States of eminent domain:
>
> (a) the water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the Laws of the State of California."

Each of the contracts referred to in the complaint between The Santa Barbara County Water Agency and the so-called Member Units provides that it is made in consideration of the mutual covenants therein contained and contains the provisions above referred to in this Paragraph I.

II

Plaintiff or the United States or the Bureau of Reclamation has not appropriated or obtained any permit to appropriate water from the Santa Ynez River, and has no [fol. 665] right whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the bound-

aries of any "member unit" of the Agency, or elsewhere. The City of Santa Barbara or any of the County Water Districts referred to in the complaint has not appropriated or obtained any permit to appropriate water from the Santa Ynez River and has no right whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the boundaries of the City or within the boundaries of any of the said County Water Districts, except that the City of Santa Barbara and Montecito County Water District have certain water rights under which water has been and is being taken at diversion points upstream from the Cachuma reservoir site in limited quantities which have been fully developed and are being fully utilized by said City and Water District respectively. No water has been appropriated and no water right has been acquired for the use or benefit of any land or use within the City of Santa Barbara or any of the said County Water Districts except such as may have been acquired by virtue of the water rights of the City of Santa Barbara and Montecito County Water District above referred to.

III

Defendants are informed and believe and therefore allege that with the exceptions noted in Paragraph II above, [fol. 666] the plaintiff or the United States or the City of Santa Barbara or any of the County Water Districts referred to in the complaint or any land or water user within the City or any of said County Water Districts has not acquired any water by agreement with any holder of water rights, and has not acquired any water rights by agreement under which water may be diverted from land in the Santa Ynez River Valley to which it is appurtenant, and has not acquired any water rights which are not appurtenant to land in the Santa Ynez River Valley.

IV

Defendants are informed and believe and therefore allege that there is no water of the Santa Ynez River which is not required to satisfy and supply the rights and needs

of the owners of lands which are riparian to the said river, the rights and needs of owners of land for which water rights have been acquired by appropriation or prescription, the rights and needs of the owners of land overlying percolating waters which depend upon the flow of the Santa Ynez River for replenishment and supply, and the rights and needs of the owners of land for which water from such percolating waters have been acquired by appropriation or prescription. Further on such ground defendants allege that if there is any right to salvage excess waters of flash floods, or other floods, the right belongs to and should be exercised solely for the benefit of land owners holding [fol. 667] riparian water rights and owners of land overlying percolating waters fed by and dependent upon the Santa Ynez River.

V

Any interruption in the flow of the Santa Ynez River will cut down and substantially decrease the amount of water obtainable for owners of lands and owners of said overlying percolating waters fed by and dependent upon the waters of the said stream.

VI

The covenants of the said contract between the United States and The Santa Barbara County Water Agency to be performed on the part of the United States with respect to the furnishing of water are impossible of performance and the contract provides that no remedy shall exist for the failure of the United States to perform such covenants or any thereof. All other covenants of the said contract are dependent on and purely incidental to the said covenants for the furnishing of water. There is no consideration for the covenants of The Santa Barbara County Water Agency in the said contract and the said contract is void.

Plaintiff alleges that the contract is valid and prays for an adjudication of such validity. The existence or extent of surplus water available for appropriation by the United States cannot be adjudged in this action and proceedings are pending under Division 2 Part 2 of the Cali-

[fol. 668] fornia Water Code for the determination of the matters alleged in Paragraphs II, III, IV and V of this defense, and for the determination of the right of the United States to appropriate water from the Santa Ynez River.

VII

The covenants of each of the contracts between The Santa Barbara County Water Agency and the respective Member Units to be performed on the part of said Agency with respect to the furnishing of water are impossible of performance and the contracts provide that no remedy shall exist for the failure of the said Agency to perform such covenants or any thereof. All other covenants of the said contracts are dependent on and purely incidental to the said covenants for the furnishing of water. There is no consideration for the covenants of the respective Member Units in the said contracts and the said contracts are void. Plaintiff alleges that each of the said contracts is valid and prays for an adjudication of such validity. The existence or extent of surplus water available for appropriation by the United States cannot be adjudged in this action, and proceedings are pending under Division 2 Part 2 of the California Water Code for the determination of the matters alleged in Paragraphs II, III, IV and V of this defense, and for the determination of the right of the United States to appropriate water from the Santa Ynez River.

[fol. 669] *As a Further Ninth, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Allege as Follows:*

I

The master contract referred to in the complaint is proposed by the United States by the Bureau of Reclamation, and recites that it is made, in pursuance of the reclamation laws of the United States. The said reclamation laws provide that the right to the use of waters acquired under the provisions of the reclamation laws shall be appurtenant to the land irrigated.

II

The said master contract provides in Paragraph II and other paragraphs thereof that the United States shall furnish water to Member Units of the Agency and provides in Section 14 that the United States reserves the right to all waste, seepage and return flow water derived from water so furnished which escapes or discharges beyond the boundaries of the Agency.

Each of the contracts between the Agency and the Member Units referred to in the complaint provides that the water for Member Units and Water Users therein shall be "furnished" pursuant to the provisions of the said master contract and also provides that all waste, seepage and return flow water derived from water so furnished [fol. 670] which escapes or discharges beyond the boundaries of the Agency is reserved to the United States.

These answering defendants are informed and believe and therefore allege that the lands of the Santa Barbara coastal plain in which the lands within the boundaries of the Member Units are located are underlaid with sands and formations bearing percolating and underground waters and that water which seeps into lands within the boundaries of the Member Units finds it (sic) way into the said sands or formations and becomes a part of and is mingled with the percolating and underground waters underlying the said lands.

These answering defendants are further informed and believe and therefore allege that waste waters and return waters from the lands lying within the boundaries of the Member Units find their way into natural water courses and water channels and become a part of the water of such water courses and water channels and subject to the water rights and laws with respect to the waters of said water courses and water channels.

The said provisions of the master contract are invalid and void and beyond the powers granted by Congress to the Secretary of Interior as the contracting agent of the United States under the reclamation laws. The said contracts of the Agency and of said Member Units are invalid and void under California Law.

[fol. 671] Wherefore, defendants pray for judgment and relief as prayed for in their original answer herein.

Sherman Anderson, Alex W. Davis and W. P. Butcher, By s/ Sherman Anderson, Attorneys for defendants.

[fol. 681] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed October 22, 1952

In this cause the default of all the defendants, except the defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall (hereinafter referred to as the "Answering Defendants") was duly entered on order of the Court May 1, 1950. Thereafter this cause came on regularly for hearing before the Court on November 14, 1951, sitting without a jury, the Honorable Charles F. Blackstock, Judge of the Superior Court, presiding, Plaintiff appearing by Vern B. Thomas, Esquire, District Attorney of said County and Lawrence M. Parma, Deputy District Attorney of said County, and the Answering Defendants appearing by Sherman Anderson, Esquire, and W. P. Butcher, Esquire. And evidence having been introduced and the cause submitted to the Court for decision on Plaintiff's Complaint and that portion of the Answer of the Answering Defendants filed August 18, 1950, from pages 1 to 12 inclusive (but exclusive of the affirmative defenses alleged in pages 13 to 26 inclusive) as said Answer is amended with respect to the Answer to the Second, Third, Fourth and Fifth Causes of Action in Plaintiff's Complaint by pages 1 and 2 of an "Amendment" to said [fol. 682] Answer verified December 4, 1950 and filed on or about January 2, 1951 (but exclusive of the First and Ninth Affirmative Defenses contained at pages 2 to 5 inclusive of said "Amendment") and as said Answer was further amended with respect to said Answer to said Second, Third, Fourth and Fifth causes of action in said

Complaint by an oral stipulation entered into at the time of trial whereby said portions of said Answer were amended to include the allegation by interlineation on the face of said Answer that the elections referred to in said cause of action were not carried on or conducted in the manner required by sections 31157, 31407, and 31391 of the Water Code of the State of California, and the Court having duly considered the cause and being fully advised in the premises, the Court now makes its findings of fact as follows:

I

The Santa Barbara County Water Agency (hereinafter for purposes of brevity sometimes referred to as the "Agency") now is, and at all times herein mentioned continuously was, and has been a district of the State of California duly and regularly organized and existing under and by virtue of the laws of the State of California, to wit: that certain Act of the Legislature of the State of California known as "The Santa Barbara County Water Agency Act", being Chapter 1501 of the Statutes of the Fifty-Sixth (56th) Session of the Legislature of the State [fol. 683] of California (1945 California Statutes, Chapter 1501, Pages 2780-2801), approved July 18, 1945, as amended by that certain Act of the Legislature of the State of California, being Chapter Twelve (12) of the Statutes of the State of California enacted at the 1949 Regular Session of the Legislature of the State of California, approved February 3, 1949 (1949 California Statutes, Chapter 12, Pages 18 to 27).

II

That by an Act of the First Extra Session of the Fifty-Sixth (56th) Legislature of the State of California entitled "An act to validate the organization, boundaries, governing officers or boards, acts, proceedings and bonds of public bodies, to take effect immediately", approved February 12, 1946 (Chapter 17 of the 1st Extra Session of the 56th Legislature, 1947 California Statutes, pages 20-23), and by an Act of the 1949 Regular Session of the Legislature of the State of California entitled "An act to validate the organization, boundaries, governing officers or boards, acts,

proceedings, elections, and bonds of public bodies as herein defined, declaring the urgency of this act, to take effect immediately", approved June 30, 1949 (1949 California Statutes, Chapter 781, pages 1508-1511), said Legislature confirmed, validated, and declared legally established the boundaries of the Santa Barbara County Water Agency, and declared the members of the Board of Directors and [fol. 684] the officers of said Agency theretofore elected or appointed and acting as such were the legally appointed or elected, qualified and acting members of such Board of Directors and officers.

III

That all of the allegations of the following-numbered paragraphs of said Complaint are true, to-wit: paragraphs III, IV, V, VI, VII, VIII, IX and X.

That all the recitations and findings contained in Resolution Number Nine (9) of the Board of Directors of said Agency, referred to in paragraph V of said Complaint, were true and correct and valid and supported by appropriate evidence.

IV

That said report of said California Districts Securities Commission is in the words and figures as embodied in Plaintiff's Exhibit Number One (1) introduced in evidence at the trial hereof. That while said Master Contract was submitted to the said Commission for its report, as aforesaid, the laws of the State of California did not require such a submission or any submission of said contract to said Commission for any purpose whatsoever, and said submission was needless.

V

That all of the allegations of the following-numbered paragraphs of said Complaint are true, to-wit: paragraphs [fol. 685] XII, XIII, XIV, XV, XVI (and the Ordinance of the City of Santa Barbara referred to in said paragraph XVI being in the form and words and figures contained in Plaintiff's Exhibit Number Three (3) introduced in evidence at the trial hereof), and XVII. That a true copy of

said contract between said Agency and said City of Santa Barbara is attached to the Complaint as Exhibit "D".

VI

That all of the allegations of the following-numbered paragraphs of said Complaint are true, to-wit: paragraphs XVIII (and the Ordinance of the Carpinteria County Water District referred to in said paragraph XVIII being in the form and words and figures contained in Plaintiff's Exhibit Number Four (4) introduced in evidence at the trial hereof), XIX and XX. That while the execution and delivery of said contract between said Agency and said Carpinteria County Water District (a true copy of which is attached to the Complaint as Exhibit "E") was duly and regularly authorized by said last referred to election, said execution and delivery independently of said election was also duly and regularly authorized by Resolution Number Fifty-Five (55) of the Board of Directors of said Carpinteria County Water District referred to in paragraph XIX of said Complaint.

VII

That all of the allegations of the following numbered [fol. 686] paragraphs of said Complaint are true, to-wit: paragraphs XXI (and the Ordinance of the Goleta County Water District referred to in said paragraph XXI being in the form and words and figures contained in Plaintiff's Exhibit Number Five (5) introduced in evidence at the trial hereof), XXII and XXIII. That while the execution and delivery of said contract between the said Agency and said Goleta County Water District (a true copy of which is attached to the Complaint as Exhibit "F") was duly and regularly authorized by said last referred to election, said execution and delivery, independently of said last referred to election, was also duly and regularly authorized by Resolution Number Fourteen (14) of the Board of Directors of said Goleta County Water District referred to in paragraph XXII of said Complaint.

VIII

That all of the allegations of the following numbered paragraphs of said Complaint are true, to-wit: paragraphs

XXIV (and the Ordinance of the Montecito County Water District referred to in said paragraph XXIV being in the form and words and figures contained in Plaintiff's Exhibit Number Six (6) introduced in evidence at the trial hereof), XXV and XXVI. That while the execution and delivery of said contract between said Agency and the Montecito County Water District (a true copy of which is attached to the Complaint as Exhibit "G") was duly and regularly [fol. 687] authorized by said last referred to election, said execution and delivery, independently of said last referred to election, was also duly and regularly authorized by Resolution Number Two Hundred Ninety-three-A (293-A) of the Board of Directors of said Montecito County Water District referred to in paragraph XXV of said Complaint.

IX

That all of the allegations of the following numbered paragraphs of said Complaint are true, to-wit: paragraphs XXVII (and the Ordinance of the Summerland County Water District referred to in said paragraph XXVII is in the form and words and figures contained in Plaintiff's Exhibit Number Seven (7) introduced in evidence at the trial hereof), XXVIII and XXIX. That while the execution and delivery of said contract between said Agency and said Summerland County Water District (a true copy of which is attached to the Complaint as Exhibit "H") was duly and regularly authorized by said last referred to election, said execution and delivery, independently of said last referred to election, was also duly and regularly authorized by the resolution of the Board of Directors of said Summerland County Water District referred to in paragraph XXVIII of said Complaint.

X

That all of the allegations of the following numbered paragraphs of said Complaint are true, to-wit: paragraphs [fol. 688] XXX, XXXI, XXXII, and XXXIII. That the form, contents and provisions of all said contracts between the Agency and the City of Santa Barbara, Goleta County Water District, Montecito County Water District, Carpinteria County Water District, Summerland County Water

District and Santa Ynez River Water Conservation District were approved by the United States of America.

XI

That all the allegations of paragraphs Number XXXIV and XXXV of said Complaint are true. That on December 20, 1949, said Agency notified in writing said County Water Districts and said City of Santa Barbara of the proposed filing of the instant action as required by Article 35 of the contract of said Agency with said City and by Article 36 of the contracts of said Agency with said County Water Districts.

XII

That said Master Contract in all respects complies with the requirements of the statutes and laws of the United States of America applicable thereto.

XIII

That said Master Contract was ratified and confirmed by the United States of America by virtue of the enactment of Public Law 350, 81st Congress, Chapter 680, 1st Session, making appropriations for the Department of the Interior for the fiscal year ending June 30, 1950 and for [fol. 689] other purposes, which Act reads in part, so far as is here applicable, as follows:

> That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior for the fiscal year ending June 30, 1950, namely:
>
> . . . . . .
>
> Bureau of Reclamation
>
> . . . . . .
>
> Construction: For construction and continuation of construction of the following projects in not to exceed the following amounts, all to be reimbursable (except as otherwise provided by law) under the reclamation law, to remain available until expended for carrying out projects (including the construction of transmis-

sion lines) previously or herein authorized by Congress:

Santa Barbara County project, California, Cachuma Unit, $5,185,000: *Provided,* That none of the funds appropriated herein shall be available for construction of physical works or the acquisition of rights-of-way until the condition contained in the contract between the United States and the Santa Barbara County Water Agency, executed September 12, 1949, concerning participation by member districts shall have been met, and the outcome of elections within the member districts shall have been favorable in sufficient member districts to approve the disposition of the quantity of water as provided in said contract to make the same effective;

Boise project, Idaho . . . . . ."

XIV

That the denials contained in paragraphs I, II and III of the Answering Defendants' Answer to the First Cause of Action of the Complaint are not true.

[fol. 690]

XV

That the denials contained in the first paragraph of paragraph IV of the Answering Defendants' Answer to the First Cause of Action of the Complaint are not true. That neither the United States of America nor said Agency, at the time of the trial hereof, or at any time prior thereto, had any water to furnish under said Master Contract, and that the only rights that the United States of America and said Agency, or either of them, have are by virtue of certain applications of the United States of America to appropriate water from the Santa Ynez River now pending before the Division of Water Resources of the State of California. That it is not necessary that the United States of America or the Agency now or at any time prior hereto, have any such water, there being no duty on either the United States of America or the Agency to acquire any water until the time for delivery of such water, as specified

in said various contracts, has arrived, which time has not yet arrived.

XVI

That the denials contained in paragraphs V to XXVIII, both numbers inclusive, of the Answering Defendants' Answer to the First Cause of Action of the Complaint are not true.

XVII

That each of the Answering Defendants at the time of the establishment of the Agency on September 15, 1945, [fol. 691] and continuously at all times thereafter up to and including the time of trial, was a resident of the Agency, an owner of property, an owner of property therein, a registered voter therein, and a taxpayer therein and paid all the Agency taxes levied during said period on his said property.

XVIII

That all of the property within the Agency, including the property of each Answering Defendant was, is and will be benefited by the establishment of the Agency and by the execution and performance of said Master Contract between the United States of America and said Agency, and the execution and performance of said contracts between said Agency and the City of Santa Barbara and said County Water Districts.

XIX

That on October 2, 1945, Plaintiff filed an in rem action in the Superior Court of the State of California in and for the County of Santa Barbara, numbered 37417, and entitled "The Santa Barbara County Water Agency, a public district and body politic and corporate, Plaintiff, vs. The State of California, All Property Owners in said Agency, All Residents in said Agency, All Registered Voters in said Agency, and All Persons Interested, Defendants," which action was instituted under and by virtue of section 16 of the Santa Barbara County Water Agency in order to determine the legality of the existence of the Plaintiff. That

[fol. 692] judgment in said action numbered 37417 was duly and regularly rendered and entered February 14, 1946 in favor of Plaintiff therein and against the State of California, all the defendants therein and against all persons whomsoever adjudging that said Plaintiff was a legally existing and was a legal public district and body politic and corporate, which judgment became final and was never appealed from nor set aside.

XX

That the Answering Defendants herein were parties defendant to the action referred to in paragraph XIX of these Findings of Fact, and are bound and concluded by the judgment therein rendered.

XXI

That in reliance upon the judgment rendered in said action numbered 37417, the Agency negotiated and executed all of the aforementioned contracts, levied taxes and proceded (sic) to exercise powers granted it under the laws of California.

XXII

That although the Answering Defendants herein were parties to said action numbered 37417, each and every one of them failed, and neglected to appear therein and assert the alleged illegality of the Agency, including their contentions that their property was not benefited by the creation of the Agency, that the Agency was violative of [fol. 693] Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, and violative of Article IV, Section 31, Article IV, Section 25 (33), Article XI, Section 6 and Article XI, Section 12 of the Constitution of California, all of which contentions could have been presented and asserted before the court in said action number 37417.

That the answering Defendants did not seek to raise the last mentioned contentions relative to the alleged illegality and unconstitutionality of the Agency until they commenced, as plaintiffs, in said Superior Court on January 21,

1950 an action for declaratory relief, numbered 43831 and entitled "Maurice A. Balaam, Ted R. Holden, William G. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall, Plaintiffs, vs. Santa Barbara County Water Agency, etc., et al."

XXIII

That by reason of their conduct as aforesaid, the Answering Defendants have waived their right to urge herein the alleged illegality of the Agency.

XXIV

That by reason of their conduct as aforesaid and the reliance of the Agency on the judgment rendered in said action numbered 37417 establishing the legality of the Agency, said Answering Defendants are estopped from urging herein the alleged illegality of the Agency.

[fol. 694]

XXV

That neither the Agency nor any of the powers vested in it by the laws of California is illegal or unconstitutional.

XXVI

That said Master Contract between the United States of America and the Agency, and each and every term, condition and provision of said contract, is valid, legal, effective and authorized by law, and is binding upon the parties to said contract.

XXVII

That said contracts between said Agency and the City of Santa Barbara and said County Water Districts, and each and every term, condition and provision of each said last mentioned contracts is valid, legal, effective and authorized by, and is binding upon the respective parties to said last mentioned contracts.

XXVIII

That none of the Answering Defendants is an owner of property within, or a registered voter within or resident in said City of Santa Barbara nor in any of said County Water Districts.

Second Cause of Action

XXIX

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Second Cause of [fol. 695] Action contained in the Complaint are true, and Findings of Fact numbered X to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Second Cause of Action.

XXX

That the denials contained in paragraphs I, II, and III of the Answer of the Answering Defendants to the Second Cause of Action of the Complaint, as said Answer was amended by an amendment filed January 2, 1951 and as further amended at the trial hereof (hereinafter referred to as the "Amended Answer") are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact Number XV.

XXXI

That the allegations and denials of paragraph IV of said Amended Answer to the Second Cause of Action of the Complaint are true but that the contract of said Carpinteria County Water District was a contract with said Agency and not with the United States of America; that it was not necessary for said Carpinteria County Water District to comply with sections 31153, 23223, 23224, 31157, 31407 and 31391 of the Water Code. That the elections mentioned in said Second Cause of Action was duly and regularly carried on and conducted in compliance with the provisions of law applying to initiative ordinances in a county water district.

[fol. 696] *Third Cause of Action*

XXXII

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Third Cause of Action contained in the Complaint are true, and Findings of Fact numbered I to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Third Cause of Action.

XXXIII

That the denials contained in paragraphs I, II and III of the Answering Defendants' Amended Answer to the Third Cause of Action of the Complaint are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact numbered XV.

XXXIV

That the allegations and denials of paragraph IV of said Amended Answer to the Third Cause of Action of the Complaint are true but that the contract of said Goleta County Water District was a contract with said Agency and not with the United States of America; that it was not necessary for said Goleta County Water District to comply with sections 31153, 23223, 23224, 31157, 31407 and 31391 of the Water Code. That the election mentioned in [fol. 697] said Third Cause of Action was duly and regularly carried on and conducted in compliance with the provisions of law applying to initiative ordinances in county water districts.

Fourth Cause of Action

XXXV

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Fourth Cause of Action contained in the Complaint are true, and Findings of Fact numbered I to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Fourth Cause of Action.

XXXVI

That the denials contained in paragraphs I, II and III of the Answering Defendants' Amended Answer to the Fourth Cause of Action of the Complaint are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact numbered XV.

XXXVII

That the allegations and denials of paragraph IV of said Amended Answer to the Fourth Cause of Action of the Complaint are true but that the contract of said Montecito County Water District was a contract with said Agency and not with the United States of America; that it was not necessary for said Montecito County Water District to comply with sections 31153, 23223, 23224, 31157, [fol. 698] 31407 and 31391 of the Water Code. That the election mentioned in said Fourth Cause of Action was duly and regularly carried on and conducted in compliance with the provisions of law applying to initiative ordinances in county water districts.

Fifth Cause of Action

XXXVIII

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Fifth Cause of Action contained in the Complaint are true, and Findings of Fact numbered I to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Fifth Cause of Action.

XXXIX

That the denials contained in paragraphs I, II and III of the Answering Defendants' Amended Answer to the Fifth Cause of Action of the Complaint are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact numbered XV.

XL

That the allegations and denials of paragraph IV of said Amended Answer to the Fifth Cause of Action of the Complaint are true but that the contract of said Summerland County Water District was a contract with said Agency and not with the United States of America; that [fol. 699] it was not necessary for said Summerland County Water District to comply with sections 31153, 23223, 23224, 31157, 31407 and 31391 of the Water Code. That the election mentioned in said Fifth Cause of Action was duly and regularly carried on and conducted in compliance with the provisions of law applying to initiative ordinances in county water districts.

Sixth Cause of Action

XLI

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Sixth Cause of Action contained in the Complaint are true, and Findings of Fact numbered I to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Sixth Cause of Action.

XLII

That the denials contained in paragraphs I, II and III of the Answering Defendants' Amended Answer to the Sixth Cause of Action of the Complaint are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact numbered XV.

[fol. 700] CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts, the Court finds:

I

That Plaintiff, the Santa Barbara County Water Agency, now is and continuously at all times since on and after September 15, 1945, has been a legal and valid district created, organized and existing under and by virtue of the

Santa Barbara County Water Agency Act (1945 California Statutes Chapter 1501, 1949 California Statutes Chapter 12).

II

That the aforesaid Santa Barbara County Water Agency Act as enacted by 1945 California Statutes Chapter 1501 and as amended by 1949 California Statutes Chapter 12, and each and every part thereof is valid and legal and does not contravene nor violate any provisions of the Constitution of the United States of America or the Constitution of California.

III

That on and prior to September 12, 1949 and continuously ever since said date the City of Santa Barbara has been a municipal corporation, and the Montecito County Water District, the Goleta County Water District, the Summerland County Water District and the Carpinteria County Water District each have been a county water district, said city and [fol. 701] said county water districts each being duly, validly and legally organized, established and existing under and by virtue of the laws of the State of California.

IV

That the aforesaid Master Contract entitled "Contract for the Furnishing of Water To Member Units of Santa Barbara County Water Agency" executed by the Plaintiff and the United States of America, acting by and through Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, dated September 12, 1949, a true copy of which is attached to the Complaint as Exhibit "A", was duly executed on September 12, 1949 by the respective parties thereto, and that said Master Contract is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of the Santa Barbara County Water Agency and the United States of America to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract have been taken, had and performed in the manner required by law

and that said contract is valid and legally binding upon, against and in favor of said Santa Barbara County Water Agency and the United States of America.

V

That the certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Carpinteria [fol. 702] County Water District", a true copy of which is attached to the Complaint as Exhibit "E", dated September 12, 1949, and executed by and between said Agency and the Carpinteria County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Carpinteria County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of the said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is valid and legally binding upon, against and in favor of said Agency and said Carpinteria County Water District.

VI

That the certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Goleta County Water District", a true copy of which is attached to the Complaint as Exhibit "F", dated September 12, 1949, and executed by and between said Agency and the Goleta County District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Goleta County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract [fol. 703] last mentioned is valid and legally binding upon, against and in favor of said Agency and said Goleta County Water District.

VII

That the certain contract, hereinbefore referred to, entitled "Contract for Furnishing Water to Montecito County

Water District", a true copy of which is attached to the Complaint as Exhibit "G", dated September 12, 1949, and executed by and between said Agency and the Montecito County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Montecito County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Montecito County Water District.

VIII

That the certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Summerland County Water District", a true copy of which is attached to the Complaint as Exhibit "H", dated December 8, 1949, and executed by and between said Agency and the Summerland County Water District is, and that each and every of [fol. 764] the terms and provisions thereof are, lawful valid and within the lawful power of said Agency and said Summerland County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Summerland County Water District.

IX

That the certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to City of Santa Barbara," a true copy of which is attached to the Complaint as Exhibit "D", dated September 12, 1949, and executed by and between said Agency and the City of Santa Barbara is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said City of Santa Barbara to make, enter into

and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said City of Santa Barbara.

X

That the Answering Defendants herein are bound and [fol. 705] concluded by the judgment rendered in the action referred to in paragraph XIX of the Findings of Fact herein, and that said judgment is res adjudicata as to the Answering Defendants herein.

XI

That judgment should be entered in accordance herewith in favor of Plaintiff herein and against all defendants herein and it is so ordered.

s/ Chas. F. Blackstock, Judge of the Superior Court Assigned.

[File endorsement omitted]

[fol. 706] In the Superior Court of the State of California in and for the County of Santa Barbara

Judgment—October 20, 1952

In this cause the default of all the defendants, except the defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall (hereinafter referred to as the "Answering Defendants") was duly entered in order of the Court May 1, 1950. Thereafter this cause came on regularly for hearing before the Court on November 14, 1951, sitting without a jury, the Honorable Charles F. Blackstock, Judge of the Superior Court, presiding, Plaintiff appearing by Vern B. Thomas, Esquire, District Attorney of said County and Lawrence M. Parma, Deputy District Attorney

of said County, and the Answering Defendants appearing by Sherman Anderson, Esquire, and W. P. Butcher, Esquire. And evidence having been introduced and the cause submitted to the Court for decision on Plaintiff's Complaint and that portion of the Answer of the Answering Defendants filed August 18, 1950, from pages 1 to 12 inclusive (but exclusive of the affirmative defenses alleged in pages 13 to 26 inclusive) as said Answer is amended with respect to the Answer to the Second, Third, Fourth and Fifth Causes of Action in Plaintiff's Complaint by pages 1 and 2 of an "Amendment" to said Answer verified [fol. 707] December 4, 1950 and filed on or about January 2, 1951 (but exclusive of the First and Ninth Affirmative Defenses contained at pages 2 to 5 inclusive of said "Amendment") and as said Answer was further amended with respect to said Answer to said Second, Third, Fourth and Fifth causes of action in said Complaint by an oral stipulation entered into at the time of trial whereby said portions of said Answer were amended to include the allegation by interlineation on the face of said Answer that the elections referred to in said causes of action were not carried on or conducted in the manner required by sections 31157, 31407, and 31391 of the Water Code of the State of California, and the Court having duly considered the cause and being fully advised in the premises, and the Court having heretofore made and caused to be filed herein its written Findings of Fact and Conclusions of Law;

Now, Therefore, by Reason of the Law and the Findings of Fact Aforesaid It Is Hereby Ordered, Adjudged and Decreed as Follows:

I

That all of the Defendants named in the Complaint and Summons herein have each and all been duly served with process and summoned to appear and answer the Complaint of the Plaintiff herein by the publication of said summons pursuant to the order of the Court and that such publication was in the form and manner and was published for the time and in the manner prescribed by law, and that the legal [fol. 708] time for answer has since expired and no Defendants having answered herein except said Answering De-

fendants, the default of all parties defendant except said Answering Defendants has been duly entered according to law.

II

That this action is lawfully presented as an action in rem and this Court has jurisdiction of the subject matter and of all parties hereto.

III

That the Plaintiff, the Santa Barbara County Water Agency, now is and continuously at all times since September 15, 1945, has been a legal and valid district created, organized and existing under and by virtue of the Santa Barbara County Water Agency Act (1945 California Statutes, Chapter 1501, 1949 California Statutes, Chapter 12) and is lawfully and constitutionally vested with all the powers, authorities and prerogatives conferred by said Act.

IV

That the aforesaid Santa Barbara County Water Agency Act as enacted by 1945 California Statutes, Chapter 1501, and as amended by 1949 California Statutes, Chapter 12, and each and every part thereof is valid and legal and does not contravene nor violate any provision of the Constitution of the United States of America or the Constitution of California.

[fol. 709]

V

That on and prior to September 12, 1949 and continuously ever since said date the City of Santa Barbara has been a municipal corporation, and the Montecito County Water District, the Goleta County Water District, the Summerland County Water District and the Carpinteria County Water District each have been a county water district, said city and said county water districts each being duly, validly and legally organized, established and existing under and by virtue of the laws of the State of California.

VI

That a certain contract entitled "Contract For The Furnishing of Water To Member Units of Santa Barbara County Water Agency," executed by the Plaintiff and the United States of America, acting by and through Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, dated September 12, 1949, a true copy of which is attached to the Complaint herein as Exhibit "A" (sometimes called the "Master Contract") was duly executed on September 12, 1949 by the respective parties thereto, and that said Master Contract is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of the Santa Barbara County Water Agency and the United States of America to make, enter into and carry out, and that all proceedings leading up to and [fol. 710] including the execution of said contract have been taken, had and performed in the manner required by law and that said contract is valid and legally binding upon, against and in favor of said Santa Barbara County Water Agency and the United States of America, and is the lawful, legal and binding act of each of the parties thereto.

VII

That the certain contract entitled "Contract For Furnishing Water to Carpinteria County Water District", a true copy of which is attached to the Complaint herein as Exhibit "E", dated September 12, 1949, and executed by and between said Agency and the Carpinteria County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Carpinteria County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Carpinteria County Water District, and is the lawful, legal and binding act of each of the parties thereto.

VIII

That the certain contract entitled "Contract for Furnishing Water to Goleta County Water District," dated Septem-
[fol. 711] ber 12, 1949, a true copy of which is attached to the Complaint as Exhibit "F", and executed by and between said Agency and the Goleta County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Goleta County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Goleta County Water District, and is the lawful, ~~legal~~ and binding act of each of the parties thereto.

IX

That the certain contract entitled "Contract for Furnishing Water to Montecito County Water District", a true copy of which is attached to the Complaint as Exhibit "G", dated September 12, 1949, and executed by and between said Agency and the Montecito County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Montecito County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last men-
[fol. 712] tioned is valid and legally binding upon, against and in favor of said Agency and said Montecito County Water District, and is the lawful, legal and binding act of each of the parties thereto.

X

That the certain contract entitled "Contract for Furnishing Water To Summerland County Water District", a true copy of which is attached to the Complaint as Exhibit "H", dated December 8, 1949, and executed by and between said

Agency and the Summerland County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Summerland County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Summerland County Water District, and is the lawful, legal and binding act of each of the parties thereto.

XI

That the certain contract entitled "Contract for Furnishing Water to City of Santa Barbara", a true copy of which is attached to the Complaint as Exhibit "D", dated September 12, 1949, and executed by and between said Agency and the City of Santa Barbara is, and that each and every of the terms and provisions thereof are, lawful and valid [fol. 713] and within the lawful power of said Agency and said City of Santa Barbara to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said City of Santa Barbara, and is the lawful, legal and binding act of each of the parties thereto.

XII

That the organization and existence of said Agency, City of Santa Barbara and said County Water Districts and each of them and the validity, legality and constitutionality of the powers, authority and prerogatives vested in them by the laws of the State of California is hereby confirmed and approved.

XIII

That each of said contracts aforesaid, and each and every term and provision thereof, is and are in all respects valid

and authorized by law and said contracts, and each and every term and provision thereof is and are in all respects a valid, legal and subsisting contract, binding upon, against and in favor of the respective parties thereto, and said contracts and each and every term and provision thereof, and each and every act of the respective parties thereto, leading up to and including the executions and deliveries there-[fol. 714] of, is hereby confirmed, approved and adjudged to be valid, legal and constitutional.

XIV

That said Answering Defendants and each of them has waived and is estopped from asserting the illegality or unconstitutionality of said Plaintiff and of said Santa Barbara County Water Agency Act and said Santa Barbara County Water Agency Act as amended.

Done in open Court this 20th day of October, 1952.

s/ Chas. F. Blackstock, Judge of the Superior Court.

Entered October 22nd, 1952, in Judgment Book A-21, Page 333.

[File endorsement omitted]

[fol. 777] IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

REPORTER'S TRANSCRIPT OF TESTIMONY

Santa Barbara, California, Wednesday, November 14, 1951, 10 AM

The Court: All right.

Mr. Anderson: May it please the Court, in the amendment to the answer of the defendant Balaam, et al, which was filed in this court on the 2nd of January of this year——

Mr. Butcher: We had better wait until we get the clerk here; he has that file.

Mr. Anderson: Well, I think we can state, perhaps, in the absence of the clerk, what we desire to do.

Mr. Butcher: Go ahead.

Mr. Anderson: We have alleged in Paragraph IV of our Answer to the Second, Third, Fourth and Fifth Causes of Action that the notice of the special election and the proceedings had thereunder were not carried on or conducted in the manner required by Sections 31153, 23223, and 23224 of the Water Code of California. We desire to add to those sections specified Sections 31157, 31407 and 31391, by interlineation in the Second, Third, Fourth and Fifth——

The Court: What is that 31257,—or what?

Mr. Anderson: The first one is 31157.

The Court: Yes. What code is it?

Mr. Anderson: Of the Water Code of California.

The Court: The Water Code, yes.

Mr. Anderson: And the second section we desire to add is 31407.

[fol. 778] The Court: And 31391.

Mr. Anderson: Yes, 31391, all of the Water Code of California, and we desire that those be inserted by interlineation in the amendment to the answer of the defendants, which was filed on or about January 3, 1951.

The Court: Do you want to amend on the face of your answer by interlineation?

Mr. Anderson: I beg your pardon?

The Court: Do you want to amend on the face of the answer by interlineation?

Mr. Anderson: Yes, your Honor.

The Court: I don't suppose there is any objection.

Mr. Parma: No. It is stipulated it may be done in each of the defenses, to the——

Mr. Anderson: Second, Third, Fourth and Fifth——

Mr. Parma: Causes of action.

Mr. Anderson: (Continuing) —Answers to them. In each instance it is Paragraph IV of the amendment of the answer of the defendants with respect to Plaintiff's Second, Third, Fourth and Fifth Causes of Action.

The Court: All right.

Mr. Parma: May it also be stipulated, for the purpose of the record, Mr. Anderson and Mr. Butcher, that Mr. Alex

Davis, who was one of the attorneys of record, has died, and it was not necessary for me to put his name on all my services?

Mr. Anderson: That may be so stipulated.

[fol. 779] The Court: What do we have here,—a trial?

Mr. Parma: Yes, your Honor. This is the time it has been heretofore set for the trial in the action, and I think the issues are framed by the plaintiff's complaint and by the general denials contained in the original answer of the defendants, filed on August 8, 1951, together with certain amendments to their answer, which was verified, I think, on January 2, 1951.

Mr. Butcher: Yes.

The Court: Aren't you going to have a reporter? Oh, you have got one there. I couldn't see.

Mr. Parma: We are ready to proceed at this time.

The Court: All right. Go ahead.

Mr. Parma: I might state at the outset, your Honor, that in my view of the case, the issues presented will be merely, for the most part, legal, and there will be very little factual evidence introduced. I think, for the most part, the basic facts are admitted by the pleadings and by each party, and that, therefore, the issues ultimately to be resolved consist mainly of legal problems. I don't know how your Honor wants me to proceed, but I thought, unless your Honor has some objection, I would go through the complaint, paragraph by paragraph, with the answers so that we can summarize them and show what the issues are, and then—

The Court: All right. Go ahead in your own way.

Mr. Parma: The first paragraph of the First Cause of [fol. 780] Action in the complaint, your Honor, alleges that the Water Agency is a district organized under the so-called Water Agency Act and its amendments, which are in 1945 California Statutes, Chapter 1501, and 1949 Statutes, Chapter 12. The answer on file admits the passage and signing of the Statutes, but denies every other inference as to its legality or to the effectiveness of those Statutes. I do not believe that on that portion of the complaint any evidence is necessary. I believe your Honor can take

judicial notice of the Statutes and draw his own conclusions as a legal matter.

Paragraph II of the complaint alleges the validation of the establishment and boundaries and offices of the Agency by two California Statutes,—1947 Statutes, First Extra Session of the 56th Legislature, pages 20 to 23, and the 1949 Statutes, Chapter 781. The answer on this issue admits the passage of the Statutes, but denies that they are legally effective, as affecting the Agency, and that they are totally without any——

Mr. Butcher: Mr. Parma, that has to do with the establishment of the boundaries of the Agency, hasn't it?

Mr. Parma: The boundaries, the establishment—the boundaries and the election and appointment of officers.

Paragraph III of the First Cause of Action alleges that C. W. Bradbury, Paul E. Stewart, R. B. McClellan, T. A. Twitchell and William N. Hollister were the Board of [fol. 781] Directors of the Agency ever since January 3, 1949, up to the time the complaint was filed; and that from September 15, 1945, to January 3, 1949, the Board of Directors was the same, except J. Monroe Rutherford was a director in place of William N. Hollister. It further alleges that T. A. Twitchell was the Chairman of the Board and J. E. Lewis was the Clerk.

As I construe the answer, it denies that the Agency was ever legally constituted and denies it has any legal constituted board of directors or officers. I don't believe any evidence is necessary on that point. I construe the answer to admit that these men purported to act and were purported to be appointed, but that their appointment was without legal effect.

Paragraph IV names the defendants in this first cause of action, and the answer makes no issue on that point.

Mr. Butcher: We just failed to deny it.

Mr. Parma: They just failed to deny it. They made no pleading to it.

Paragraph V alleges, in effect, that in order to get water for the Santa Ynez Water Conservation District, the

Goleta County Water District, the City of Santa Barbara, the Montecito, Summerland and Carpinteria County Water District's lands and inhabitants, the Agency, since about September 15, 1945, negotiated with the United States Bureau of Reclamation, and the Bureau of Reclamation [fol. 782] offered to supply water pursuant to the so-called master contract, which is attached as Exhibit A. Now, the answer admits the negotiations and admits that Exhibit A was signed, but it denies every other allegation and inference, and further alleges as follows: Denies that the United States or the said Agency ever has had or now has any water to furnish or sell as alleged in Paragraph V.

Paragraph VI of the First Cause of Action alleges that on September 12, 1949, the Board of Directors passed Resolution No. 9, finding that the Agency's liability under the proposed master contract could be repaid from the taxes levied under Section 10.1 of the Water Agency Act, plus funds received from proposed member unit contract payments, and that no agency election was necessary under Section 6.1 of the Water Agency Act, and authorizing the master contract to be executed by Mr. Twitchell and Mr. Lewis, as Chairman and Clerk of the Board. Resolution No. 9 is attached as Exhibit B. The answer admits that Resolution No. 9 was voted for in the form and time and place specified, but it denies every other allegation and inference of that particular paragraph, and alleges that the findings of Resolution No. 9 were not valid because no evidence is in support of them. I think that presents purely a legal issue, your Honor. We rely on the contracts which are attached to the complaint to show that the taxes noted, plus the payments to be made under the contracts [fol. 783] were sufficient to support the finding of the resolution.

Paragraph VII of the First Cause of Action alleges that the master contract was executed by the Agency on September 12, 1949, and delivered to the Bureau of Reclamation. The answer of the defendants admits that the master contract was signed, sealed and delivered as alleged, but denies every other allegation and any other inferences that can be

drawn. Under our view, I think that is another p. ly legal issue that needs no evidence introduced.

The eighth paragraph of the First Cause of Action alleges that on September 12, 1948, the United States, acting by Richard Boke, the Regional Director of District Two of the Bureau of Reclamation, executed the master contract, and that certain number and identifying marks were endorsed on it. The answer admits that the master contract was signed and delivered on the date and by the persons alleged, but denies each and every other allegation and inference. There is a question in my mind as to whether any evidence is needed on this point. There is also a question in my mind whether that allegation is meant to deny the legal authority of Mr. Boke to sign a Bureau of Reclamation contract on behalf of the United States, assuming the contract was valid. If that issue is raised under the pleadings, I would ask the Court to take judicial notice of Mr. Boke's position and authority; and, furthermore, I would ask the Court to take judicial notice of Public [fol. 784] Law 50 of the 81st Congress, Chapter 680, First Session.

Mr. Butcher: What chapter?

Mr. Parma: Chapter 680, First Session. That was an appropriation statute, your Honor, that was enacted after this contract was signed, and the Congress referred to the execution of the contract and made the appropriation to further the work of the Cachuma Project, which we believe ratified Mr. Boke's authority, in case there is any legal issue presented on it.

Paragraph IX alleges that on June 6, 1949, the Agency, by Resolution No. 7, approved the master contract as to form and directed that it be submitted to the District Securities Commission of the State of California. The answer admits the passage of the resolution on the date alleged and the form attached as Exhibit C, but denies each and every other allegation and inference to be drawn from the pleadings. I don't believe any further evidence is needed on that issue, either. It is purely one of law.

Paragraph X alleges that on June 14, 1949, the master contract was submitted by the Agency to the District Securities Commission, and no issue is made on that inasmuch as the answer does not plead on that particular paragraph.

Paragraph XI of the First Cause of Action alleges that the District Securities Commission made its examination, and on July 7, 1949, made its report concerning the proposed master contract, and the report is on file with the [fol. 785] Agency. The original answer does not plead to that particular paragraph; so, no issue was involved, but I intended to introduce a certified copy of the report and show what the District Securities Commission found.

Paragraph XII alleges that the contract as executed was the same as submitted to the District Securities Commission, except that at the suggestion of that Commission, Article 25B was added to the contract.

Mr. Anderson: Pardon me, Mr. Parma. I wonder if that is a clerical mistake. Shouldn't that have been 29B? The following paragraph in your complaint mentions 29B, which I think is the one that should have been referred to previously, perhaps.

Mr. Parma: No, no.

Mr. Anderson: It should have been 25B in the first instance and 29B in the second?

Mr. Parma: 29B in the second, yes. The answer denies that the alleged master contract ever has been or now is valid or legal, or that it ever was lawfully authorized or executed. However, it does not deny that the contract is the same as submitted, with that one exception; so I don't believe there is any issue on that, except as to the validity of the contract.

Paragraph XIII quotes Article 29B of the master contract, requiring execution within one year of sufficient member unit contracts to take 8100 acre feet of water per [fol. 786] year during the first five-year period of the contract, and providing that if this occurs, the master contract provisions, for districts that did not become member units, shall be disregarded. The answer has the same allegations in this regard as it did to Paragraph XII, to-wit,

that the contract is of no legal force or effect, but it does not deny that these provisions are in the contract; so I take it that no issue is presented, except a legal one, which goes all through the case, of the legality of this contract.

Paragraph XIV alleges that on September 12, 1949, by Resolution No. 10, the Board of Directors authorized the execution of six member unit contracts, so-called, of the Goleta, Montecito, Summerland and Carpinteria County Water Districts, the City of Santa Barbara, and the Santa Ynez River Water Conservation District. The original answer admits passage of the resolution as alleged and admits its provisions, but denies all other allegations and inferences. By that I take it that only a legal issue is raised as to the effect of the resolution as passed, as to whether it is legal or not.

Paragraph XV of the first cause of action alleges that on September 12, 1949, the Agency executed six member unit contracts that I have referred to before, and delivered them to the member units. The answer admits that the individuals mentioned signed and affixed the seals of the document referred to on the date alleged, and denies all [fol. 787] other allegations and inferences; which raises a question as to the legality of the contracts. But at this time I want to ask counsel a question.

Mr. Anderson, I note that you deny that these were delivered by the Agency to the various member unit contracts, and I wondered if that was put in there for a purpose, or whether we could stipulate that on or about September 12th, or shortly thereafter, Mr. Lewis, the Clerk, caused all the member unit contracts to be delivered in the sense that they were manually transmitted to the officers of these various proposed member units?

Mr. Anderson: Yes, I am agreeable to stipulating to that.

Mr. Parma: Paragraph XVI alleges on November 29, 1949, the City of Santa Barbara, pursuant to an election held therein on November 22, 1949, enacted an initiative ordinance authorizing its member unit contracts to be executed. The answer admits that the election was held on November 22nd, the electors voted in favor of the initia-

tive ordinance, but denies each and every other allegation and inference contained. I intend to introduce and offer for evidence the transcript of the election proceedings in the City of Santa Barbara, showing the steps that were taken in connection with that election, and otherwise than that, I think the issue is purely of law.

Paragraph XVII alleges that on November 29, 1949, the [fol. 788] City executed its contract and delivered it to the Water Agency, and the contract is attached as Exhibit D. The answer admits that on November 29th the City officials signed and delivered the City Agency member unit contract in the form of Exhibit D, but denies each and every other allegation and inference; so I take it that presents solely another question of law without introduction of further evidence on behalf of the plaintiff.

Paragraph XVIII alleges that on November 28, 1949, Carpinteria County Water District adopted an ordinance, after an election held on November 22, 1949, authorizing the Carpinteria Agency member unit contract to be executed. The answer admits that on November 22, 1949, the electors of that district voted in favor of the ordinance alleged, but denies all other allegations and inferences. In that connection we intend to introduce a certified copy of the election proceedings in Carpinteria, and, other than that, I think the issues are purely legal.

Paragraph XIX alleges that Carpinteria, on November 7th, adopted Resolution No. 55, authorizing the execution of the Carpinteria member unit contract I have referred to. The answer admits that on the date alleged, the Board of Directors of that district met as alleged and voted in favor of the resolution, and denies every other allegation and inference. I think that is purely another legal question. The resolution will be part of the election exhibit.

[fol. 789] Paragraph XX alleges that Carpinteria executed its contract on November 7, 1949, and delivered it to the Agency in the form of Exhibit E, attached to the complaint. The answer admits the officers of Carpinteria signed and dated the Carpinteria contract as alleged, but denies every other allegation and inference and presumption.

I might pause here. I think that is purely a question of law presented by this issue, except, again, that there is a denial as to the delivery of the contract to the agency, and I wondered if we could enter into the same stipulation in reference to all these member unit contracts: that on or about the date of the resolutions of the Board of Directors authorizing their execution, and after they were executed, the proper officers of the District manually transmitted those contracts back to Mr. Lewis' office here in the court house which are now on file.

Mr. Anderson: Yes, I think that is agreeable.

Mr. Parma: All right.

Paragraph XXI alleges, in regard to the Goleta County Water District, that on the 29th of November, 1949, pursuant to an election held on the 22nd of November, the electors adopted an initiative ordinance authorizing the execution of the contract, and the answer again admits that on November 22nd, the electors voted in favor of the Goleta contract, but denies each and every other allegation and inference.

[fol. 790] The Court: Is that the proper name there, in Paragraph XVII of the answer,—the electors of the Goleta County Water District?

Mr. Parma: Goleta County Water District is the proper name of that water district.

The Court: That is the proper name, is it?

Mr. Parma: Goleta, G-o-l-e-t-a, County Water District.

The Court: Well, they admit that on the date alleged in said Paragraph XXI, the electors of said Goleta County Water District—that was the allegation, wasn't it? You referred to Goleta County Water District, did you?

Mr. Parma: Yes, G-o-l-e-t-a.

The Court: All right.

Mr. Parma: We intend to offer a certified transcript of the election proceedings there, and I think, other than that, the issues are purely legal.

Paragraph XXII alleges that Goleta, on Decmeber (sic) 1, 1949, adopted Resolution No. 14, and by their Board of Directors authorizing the execution of its member unit

contract with the Agency. The answer admits that the Board of Directors met as alleged and voted in favor of the resolution, but denies every other allegation, inference and presumption, and so forth, contained. We believe that is another legal issue. The resolution will be in evidence because it is attached to the election proceedings.

Paragraph XXIII alleges that on December 1, 1949 [fol. 791] Goleta executed and dated its contract, and delivered it to the Agency in the form of Exhibit F, attached to the complaint. The answer admits that the officers signed and dated the contract in the form of the exhibit, but denies each and every other allegation and inference. I think that presents purely a legal problem, and we don't intend to offer any other evidence other than the stipulation as to the manual transmission of the contract back to the Agency.

Paragraph XXIV alleges that on November 28, 1949 the Montecito County Water District adopted an initiative ordinance pursuant to the election of November 22, 1949 authorizing the execution of the contract. The answer again admits that the election was held and the vote was favorable, but denies each and every other allegation inference, matter and thing. We will again offer for evidence the Montecito transcript in that regard, concerning the election.

Paragraph XXV alleges that on December 8, 1949, the Montecito Board of Directors adopted Resolution No. 293A, authorizing its officers to execute and deliver the contract, and the answer admits that that resolution was passed as alleged, but denies every other legal inference and presumption and matter. We will offer no evidence on that, except the resolution.

Paragraph XXVI alleges that on December 8, 1949 Montecito executed the contract, dated it September 12 [fol. 792] 1949, and delivered it to the Agency in the form of Exhibit G. The answer admits that the Montecito officers signed and dated the contract in the form of Exhibit G, but denies every other allegation and inference. We will offer no evidence on that point.

Paragraph XXVII alleges that on November 28, 1949, the Summerland County Water District adopted an initiative ordinance authorizing its contract with the Agency, pursuant to an election held November 22, 1949. The answer is similar in this regard, as it is to the other County Water District allegations; it admits the electors had the election on that date and voted in favor of the ordinance, but denies every other allegation and inference. We will introduce a transcript of the election proceedings as to that issue, and I think other than that the question is purely legal.

Paragraph XXVIII alleges that on December 8, 1949, Summerland adopted a resolution authorizing its officers to execute the contract. The answer admits that the Board of Directors met as alleged and voted in favor of the resolution, but denies every other allegation and inference. I think, again, that is a purely legal issue. The resolution will be in evidence, and that would be all that we would have on that issue.

Paragraph XXIX alleges that on December 8, 1949, the Summerland County Water District executed its con- [fol. 793] tract, dated it December 8, 1949, and delivered it to the Agency in the form of Exhibit H. The answer admits that on the date alleged the officers dated and signed the contract as it is in the form attached, but denies every other inference and presumption, matter and thing. We think that presents purely a legal issue, also.

Paragraph XXX alleges that the Santa Ynez River Water Conservation District failed to execute its contract. There is no issue on that. The answer did not deny that allegation.

Paragraph XXXI recites that all the member unit contracts, except Santa Ynez, were executed and delivered within one year of the execution of the master contract, and provide for 8200 acre foot of water per year during the first five-year period of the master contract, and it sets out the amounts of water per district. The answer admits that the member unit contracts were signed in the form attached to the complaint, but denies each and

every other allegation and inference. I don't believe there is anything but a legal issue presented there, because the transmission of the contracts on or about the date of their execution by the Water District and the City has been stipulated to, and that the contracts thereafter would speak for themselves as to the amount of water contracted for.

Paragraph XXXII alleges that each member unit contract provides it shall be subject to the terms of the master [fol. 794] contract. The answer admits that the member unit contracts are signed in the form attached to the complaint, but denies every other allegation and inference. That, I think, presents purely a legal question, because the contracts speak for themselves, because they have that provision in them. The legal effect as to whether the contracts or the provisions in the contracts are valid arises from the pleadings and the evidence before us.

Paragraph XXXIII recites that each member unit contract providing for water for irrigation use includes Articles 25, 26, 27 and 28 of the master contract with necessary revisions which were necessary, in the opinion of the Agency and the Secretary of the Interior. Those are the Excess Land Law Provisions, your Honor. The answer admits that Exhibits D to H, which were the member unit contracts, were signed in the form attached to the complaint, but denies all other allegations. I do not believe that that presents other than a legal issue, because the contracts speak for themselves as to what they contain in that regard; and, the only question, then, would be whether they were in a form approved by the Agency and the Secretary of the Interior. The fact that the Agency signed them is proof of its approval, and I have here a letter from myself to Mr. Boke, asking for the United States' approval, and a return letter from the Assistant Secretary of the Interior approving the member unit contracts, which I will offer in evidence as to the approval [fol. 795] of the United States.

Paragraph XXXIV alleges that all conditions precedent were performed by the Agency and the member units for

the execution of these contracts, and that both Agency and the member units are empowered to carry out the contract provisions and that the same are within their respective powers. That is denied in its entirety by the answer, and presents, I think, purely a question of law to be gathered by the Court and the terms of the contracts and the statutes of the United States and of the State of California.

Paragraph XXXV, and the last paragraph of the First Cause of Action, alleges that on December 19, 1949, the Agency Board of Directors adopted Resolution No. 13, authorizing the institution of this present action. The answer admits that that resolution was voted for, but denies all other allegations and inferences, and presents, I think, purely a legal question of no great moment, although we will introduce Resolution No. 13 in evidence.

The next five causes of action deal with each particular member unit contract, and I think it is only necessary to go through the first one, dealing with Carpinteria. There are only nine paragraphs in each cause of action. The second cause of action, dealing with Carpinteria County Water District, in Paragraph I, incorporates all the first cause of action, and the answer incorporates all the defenses to the answer to the First Cause of Action, so [fol. 796] that there is no further evidence introducible on that point. The evidence introduced on the First Cause of Action would go to this cause of action, too, and the issues under that particular paragraph are the same as they are on the First Cause of Action.

The second paragraph alleges who the defendants are, as to the Second Cause of Action. The original answer does not deny that, and there is, therefore, no issue on it,—no contested issue, rather.

The Third Cause of Action provides that at all times the Carpinteria County Water District was a duly established county water district, which is not denied by the answer.

Mr. Anderson: Pardon me, Mr. Parma. You said the Third Cause of Action; you meant the third paragraph.

Mr. Parma: The third paragraph. Thank you, Mr. Anderson.

Paragraph IV of the Second Cause of Action lists the officers of the Carpinteria County Water District during the time involved here, and the answer does not deny that, and, therefore, there is no contested issue in that regard.

Paragraph V of this Second Cause of Action merely alleges the president and secretary were proper officers to execute the contract. There is no denial of that in the answer; so, it is admitted, I guess, that if the contract was legal, these officers were the proper ones to execute it, although the question of the legality of the contract, of [fol. 797] course, goes all through the case in all these issues.

Mr. Butcher: Well, I think we denied legal prudence in there, in that paragraph.

Mr. Parma: No, not in Paragraph V.

Mr. Anderson: Not in Paragraph V.

Mr. Butcher: Pardon me.

Mr. Parma: Paragraph VI——

Mr. Butcher: I meant VI

Mr. Parma: Paragraph VI of the Second Cause of Action alleges that on September 26, 1949, this particular district adopted Ordinance No. 1, calling an election for November 22, 1949, to submit an initiative ordinance to the people. The answer admits the Board of Directors met as alleged and voted in favor of Ordinance No. 1, purporting to call an election for the purposes alleged, but denies each and every other allegation and inference contained in this particular paragraph. The only evidence we intend at the present time to introduce is the transcript of the election proceedings, and I think then the question will become merely one of law.

Paragraph VII of the Second Cause of Action alleges that the election was carried on according to law; that the notice of election contained the initiative ordinance and the contract, and that sample ballots were mailed, polling cards were mailed, and the proposed ordinance also was mailed, being contained in the contract. It was mailed

out to all the voters. There is no denial to this particular paragraph.

[fols. 798-99] Paragraph VIII alleges that the election was held on November 22, 1949, and in accordance with law as to the procedure. The original answer of August 18, 1950, contained no denial of this allegation. And in this regard, Mr. Reporter, at the beginning I think I said that answer was dated August 18, 1951. That was an error; it should have been 1950. However, the amended answer, dated January 2, 1951, alleges that the election was not noticed or carried on as required by Water Code Sections 31153, 23223 and 23224, and by the stipulation amending that answer further this morning, there is also the question of whether the election complied with Sections 31157, 31407 and 31391 of that same Water Code. I think that presents a legal question entirely, after the introduction of our election transcript.

The ninth and last paragraph alleges that on November 28, 1949, the vote was canvassed by the Board of Directors and the statement of votes cast was computed—made by the Board of Directors, showing 738 Aye votes and 197 No votes. The answer admits the Board of Directors met as alleged and canvassed the election returns and declared the results of the votes cast in the numbers alleged in the complaint, but denies every other allegation and inference and conclusion to be drawn.

Now, the Third Cause of Action deals with Goleta, and the allegations of the Third Cause of Action and the answer [fol. 800] thereto are the same.

The Fourth Cause of Action deals with the Montecito County Water District, and the allegations are similar. The denials are similar.

The Fifth Cause of Action deals with the Summerland County Water District. The complaint is identical, I believe, except for changes in name, and the answer presents the same issues.

The Sixth Cause of Action deals with the City of Santa Barbara, and the allegations are similar in the complaint, except they have a little different procedure in the City for who shall sign the contracts. The answer is also the same and presents the same issues as to the City, except that no defense is made that the City had to comply with these Water Code election provisions, which are contained in the amended answer. Now, that, briefly, is my view of the case, your Honor. I think Mr. Anderson also wanted to stipulate as to the defendants, and, as I understand, each one of the defendants whom Mr. Anderson and Mr. Butcher now represent, now is and, continuously, ever since the Agency has been purported to have been created, has been a voter of the Water Agency, an owner of real and personal property in the Agency, a taxpayer within the Agency, and has paid the taxes that have been levied,—and was there any other status?

Mr. Anderson: And a resident.

[fol. 801] Mr. Parma: And has been a resident in that regard. I take it that most of these people have been residents here at least as long as I have been living. Mr. Anderson also wanted me to stipulate, I believe, that the—I am willing to stipulate that the Santa Barbara County Water Agency itself has made no application and has taken no steps to either purchase or condemn by eminent domain or appropriate water in the Santa Ynez——

Mr. Anderson: Any water or water rights.

Mr. Parma: (Continuing) Water or water rights in the Santa Ynez River watershed, or elsewhere, except for whatever rights may have vested under this contract. He wanted me to stipulate, and I am also willing to stipulate, that the United States of America has not acquired any water or any water rights in the Santa Ynez Valley, except to the extent of whatever rights, if any, may be vested or possibly vested or subject to further vesting by the filing of an application before the Division of Water Resources some time ago, which application has been merely filed and noticed, and that thereafter, I believe somewhat in excess of 45 protests have been filed against that application. The matter is still pending. It has not been

heard by the Division of Water Resources, and the State has taken no steps to confirm any water rights of any sort in the Bureau of Reclamation.

Mr. Anderson: And that neither the Agency nor the [fol. 802] United States of America has acquired any water or water rights with which to furnish the member units water under the contracts alleged in plaintiff's complaint.

Mr. Parma: Yes, except whatever water rights may eventually vest, if any,——

Mr. Anderson: Pursuant to the application.

Mr. Parma: (Continuing)—pursuant to the application.

Mr. Butcher: Is that stipulated to, Mr. Parma?

Mr. Parma: That is stipulated to. There is a record on it; I don't think we have to make a formal stipulation.

Mr. Butcher: You mentioned the word "voter." It is stipulated that they were residents and qualified voters under the laws of the State of California.

Mr. Parma: Yes.

Mr. Anderson: And as contemplated by the Santa Barbara County Water Agency Act. The expression used in the Act is "elector" rather than "voter." I don't think it makes any difference.

Mr. Parma: That is so stipulated. In other words, they are all proper defendants. I would like to offer as Plaintiff's Exhibit No. 1 a certified copy, a copy certified to by Mr. Lewis, the County Clerk, of the report of the California District Securities Commission on the proposed so-called master contract. I take it counsel will have no objection.

Mr. Anderson: No objection.

[fol. 803] Mr. Parma: As Plaintiff's Exhibit No. 2, I would like to introduce Resolution No. 10 of the Santa Barbara County Water Agency, which authorizes the execution of the various member unit contracts. If counsel wants to enter a stipulation to that effect, I will stipulate that all those offers are made subject to all objections you wish to make regarding any constitutional question or legal question.

Mr. Anderson: Yes, we accept that stipulation.

Mr. Parma: So that you won't have to put it in the record every time I make an offer. I would next like to offer in evidence, which would be Plaintiff's Exhibit No. 3, the Santa Barbara City Clerk's transcript as to the proceedings in the Santa Barbara City election of November 22, 1949, and I have heretofore handed counsel a copy of the exhibits. I would next like to offer in evidence, as Plaintiff's Exhibit No. 4, the transcript of the election proceedings in the Carpinteria County Water District, certified to by the secretary there.

Mr. Butcher: Election proceedings?

Mr. Parma: Election proceedings.

Mr. Butcher: Just a minute, now. Go ahead.

Mr. Parma: (Continuing) In the Carpinteria County Water District, concerning the election of November 22, 1949.

The Court: All right.

(The above-referred-to exhibits were thereupon received in evidence and marked Plaintiff's Exhibits Nos. 1 to 4, [fol. 804] respectively.)

Mr. Anderson: My understanding is that all of these exhibits are going in subject to our objections as to their materiality or competency or relevancy?

Mr. Parma: Yes.

Mr. Butcher: And our motion to strike may be reserved?

Mr. Parma: Yes.

Mr. Butcher: What district was that?

Mr. Parma: That was Carpinteria,—Plaintiff's No. 4. Next is Plaintiff's Exhibit No. 5, a similar transcript of the election proceedings of Goleta County Water District, with reference to the election of November 22, 1949, subject to the same stipulation.

Mr. Butcher: That would be Plaintiff's No.——

Mr. Parma: No. 5. That is Goleta.

(The transcript was thereupon received in evidence and marked Plaintiff's Exhibit No. 5.)

Mr. Parma: I will now offer in evidence as Plaintiff's Exhibit No. 6 a similar transcript, certified to by the Secre-

tary of the Montecito Water District, concerning the November 22, 1949, election proceedings in the Montecito County Water District.

The Court: That will be Plaintiff's Exhibit No. 6, if there is no objection.

(The transcript was thereupon received in evidence and marked Plaintiff's Exhibit No. 6.)

[fol. 805] Mr. Parma: And I would like to introduce as Plaintiff's Exhibit No. 7 the transcript of the election proceedings in Summerland County Water District, concerning the November 22, 1949, election, which is certified to by the Secretary of that district.

The Clerk: Your Honor, may the Clerk mark all these exhibits accepted by the Court?

The Court: Yes, mark them. How do you want them marked?

The Clerk: They have been offered numerically, beginning with Plaintiff's 1.

The Court: All right, proceed, and they will be marked appropriately. They are all received and they will be marked appropriately.

Mr. Parma: And as Plaintiff's Exhibit No. 8, I would like to introduce my file copy of a letter to Mr. Richard Boke, dated October 24, 1949, requesting that the member unit contracts be approved by the Secretary of the Interior, and the letter of November 23, 1949, in reply thereto, signed by William E. Warren, Assistant Secretary of the Interior, giving the United States Bureau of Reclamation's approval to the form of the member unit contracts, together with the envelope in which I received it.

Mr. Butcher: Are you offering both of them as one exhibit?

Mr. Parma: Yes, I have got them clipped together. That [fol. 806] will be Plaintiff's No. 8.

Mr. Butcher: No. 8, is it?

Mr. Parma: Yes.

(The letters were thereupon received in evidence and marked, collectively, Plaintiff's Exhibit No. 8.)

The Court: Everything offered here will be received, unless there is an objection. If there is an objection, I will rule on the objection.

Mr. Anderson: Your Honor, it has been stipulated that the objections of the defendant may be deemed to have been made to all of these exhibits, so that we won't have to make objections as to each one.

Mr. Butcher: On the grounds that they are incompetent, irrelevant and immaterial, present no issues, and on all other conceivable grounds.

The Court: All right. That is the stipulation, is it? You haven't made that stipulation in open court this morning, have you?

Mr. Butcher: Yes.

Mr. Anderson: Yes.

Mr. Parma: I don't know as I would go so far as to say every conceivable ground.

The Court: Well, if they have been objected to, the objection in each instance is overruled.

Mr. Parma: Yes, that stipulation is correct, Mr. Butcher. [fol. 807] Mr. Butcher: Your Honor, may we have a brief recess?

The Court: Yes.

(Thereupon a short recess was taken.)

The Court: All right.

Mr. Parma: At this time, your Honor, I offer in evidence as Plaintiff's Exhibit No. 9 a certified copy of Resolution No. 13, authorizing the institution of this lawsuit.

The Court: All right.

(Thereupon the document was received in evidence and marked Plaintiff's Exhibit No. 9.)

Mr. Parma: Mr. Anderson, that stipulation we made about the water rights, of course, was subject to the same stipulation that we have, that it is merely for the facts, and we reserve our objections to the admissibility and other objections as to the competency, and so forth:

Mr. Anderson: Yes.

Mr. Parma: At this time, your Honor, as Plaintiff's Exhibit No. 10, I would like to offer in evidence all the

records and proceedings of this Court in Action No. 37417, entitled Santa Barbara County Water Agency against the State of California and all persons and property owners, and so forth. That was the original suit.

The Court: Is that the action that was filed before Judge Drapeau?

Mr. Parma: Yes, Judge Drapeau. It was filed on October [fol. 808] 2, 1945, after the Agency was formed, and judgment was entered on February 14, 1946.

Mr. Anderson: May I have that case number again?

Mr. Parma: That is 37417.

The Court: All right, it will be received. That is deemed to be objected to, is it?

Mr. Anderson: Yes, your Honor.

The Court: All right. The objection is overruled.

(The documents were thereupon received in evidence and marked, collectively, Plaintiff's Exhibit No. 10.)

Mr. Parma: Now, I believe, your Honor, that that is all the evidence and all the exhibits that I have at this time. At this time the plaintiff will rest.

Mr. Anderson: While I appreciate that the Court will take judicial notice of House Document 587 of the 80th Congress, Second Session, I would like to have it filed as an exhibit in this case, so that it would be more readily accessible to the Court.

The Court: All right, go ahead and file it.

Mr. Parma: No objection.

Mr. Anderson: That will be Defendants' Exhibit A, will it, your Honor?

The Court: All right.

Mr. Anderson: I might say that I do not consider it necessary to offer in evidence the entire document, but I wish to offer only the first portion thereof, ending with [fol. 809] page 47 of the document, being the portion that has to do with this Cachuma unit.

The Court: Well, I guess that is all right. Is there any objection to that, Mr. Parma?

Mr. Parma: I think the Court can take judicial notice of it, but I think the whole thing ought to go in.

The Court: You think the whole thing should go in, do you?

Mr. Parma: Yes. I will offer the whole thing as Plaintiff's Exhibit No. 11.

The Court: They are only offering a part of it and you are offering the rest of it?

Mr. Parma: Yes.

The Court: Let it all go in. The Court can take judicial notice, I think, of all of it.

Mr. Butcher: Well, we only offer it for the convenience of the Court.

The Court: Yes, I know. I understand that.

Mr. Butcher: So that if we refer to it in the argument or points and authorities, your Honor will have it available.

The Court: Yes.

(House Document 587 of the 80th Congress, Second Session, was thereupon received in evidence and marked Defendants' Exhibit A.)

Mr. Parma: I guess it can be stipulated the Judge can take that with him?

[fol. 810] Mr. Butcher: Yes.

Mr. Parma: And it won't be necessary to put it in the Clerk's records.

Mr. Anderson: We have no further evidence to introduce at this time.

The Court: I take it Mr. Anderson didn't have any particular objection to it, anyway. He didn't want to encumber the record; that was his idea, I think.

Mr. Anderson: That was it exactly. We have no further evidence to offer at this time. If the Court pleases, there are some new questions presented by our answer, as we discussed this morning. There are those Water Code sections, and we have a few other points which we would like to urge to your Honor by way of filing a written memorandum of points and authorities. We don't propose to cover the constitutional grounds that have been argued heretofore, nor to impose upon the Court's time in those connections, but as to the matters, we would like to have at least 20 days within which to file a written memorandum of points and authorities on behalf of the defendants.

The Court: What about your defense, that the lands that you represent receive no benefits?

Mr. Anderson: Well, those are questions which we argued before, and, of course, we do not recede from our earlier position in connection with that contention, and we would be happy to review briefly the nature of our [fol. 811] argument as to those considerations, if it will help your Honor in any way.

The Court: Well, I don't think it would make any difference. I went into that matter very thoroughly,—at least, I thought I did. I tried to. But I haven't any objection to your reenforcing your argument, if you want to, or repeating it, even. That is all right with me, if you want to do it.

Mr. Anderson: Well, only in a brief manner, your Honor. We don't think that we ought to impose upon your Honor's good nature too greatly, because this has had very thorough consideration in many of the points heretofore. Do you have any objection to our having 30 days within which to file a written——

Mr. Parma: I have no objection, counsel, to your taking as long as you deem necessary. I would like 20 days to reply, if necessary.

Mr. Anderson: That is agreeable.

Mr. Parma: But don't hurry yourselves.

Mr. Anderson: May we have 30 days, your Honor, and if we can get it finished within that period of time, why, we shall do so?

The Court: Within 30 days do you propose to file the first memorandum or brief?

Mr. Anderson: Yes.

Mr. Parma: That is satisfactory.

[fol. 812] The Court: You are the defendant, but you will file the first one, anyway; is that the idea? And will you answer the plaintiff's, or will there just be two,—yours and then their answer?

Mr. Anderson: Well, these are matters which we are urging more or less in an affirmative fashion. I have no objection to Mr. Parma filing an opening brief, if he desires to.

The Court: That is all right with me. I don't care.

Mr. Parma: I would suggest that Mr. Anderson's pro-

cedure be followed, that he have 30 days or more to file, if he requires it, and I have a similar time; and then if you want——

The Court: You want 30 days, and then you want 30 days to reply?

Mr. Parma: Yes, your Honor.

The Court: That is all right with me.

[fol. 816] [File endorsement omitted]

[fol. 817] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

L. A. No. 22761

THE SANTA BARBARA COUNTY WATER AGENCY, created by the laws of the State of California, Plaintiff and Appellant,

v.

ALL PERSONS AND PARTIES WHO HAVE ANY INTEREST IN OR WHO ARE INTERESTED IN OR TO BE INTERESTED IN OR CLAIM TO HAVE ANY INTEREST IN: THAT CERTAIN CONTRACT DATED SEPTEMBER 12, 1949, BY AND BETWEEN THE SANTA BARBARA COUNTY WATER AGENCY AND THE UNITED STATES OF AMERICA, ETC., ET AL., Defendants,

and

MAURICE A. BALAAM, TED R. HOLDEN, WILLIAM C. SUDDEN, W. G. MOORE, R. E. SUDDEN, CHARLES E. SUDDEN and L. H. CRANDALL, Defendants and Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 11, 1957

I. Notice is hereby given that The Santa Barbara County Water Agency, created by the laws of the State of California, the Appellant above named, hereby appeals to the Supreme Court of the United States from that portion [fol. 818] of the final judgment of the Supreme Court of the State of California filed and entered in this *in rem* action

on January 24, 1957, reversing that portion of the judgment of the trial court, i.e., the Superior Court of the State of California in and for the County of Santa Barbara, which Superior Court judgment had declared valid the following contracts: (1) a contract executed September 12, 1949, by the United States of America and The Santa Barbara County Water Agency entitled "Contract For The Furnishing of Water To Member Units of The Santa Barbara County Water Agency", Contract Symbol and Number 175r-1802; (2) a contract between The Santa Barbara County Water Agency and the Carpinteria County Water District, dated September 12, 1949, entitled "Contract For The Furnishing Of Water To The Carpinteria County Water District"; (3) a contract between The Santa Barbara County Water Agency and the Goleta County Water District dated September 12, 1949, entitled "Contract For The Furnishing Of Water To The Goleta County Water District"; (4) a contract between The Santa Barbara County Water Agency and the Montecito County Water District dated September 12, 1949, entitled "Contract For The Furnishing Of Water To The Montecito County Water District"; (5) a contract between The Santa Barbara County Water Agency and the Summerland County Water District dated December 8, 1949, entitled "Contract For The Furnishing Of Water To The Summer-[fol. 819] land County Water District"; (6) a contract between The Santa Barbara County Water Agency and the City of Santa Barbara, a municipal corporation, dated September 12, 1949, entitled "Contract For The Furnishing Of Water To The City of Santa Barbara".

This appeal is taken pursuant to Title 28 U.S.C.A. sec. 1257(1).

II. The Clerk of the Supreme Court of the State of California will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The record consisting of Clerks' Trans.—3 Vols., Reporters Trans.—1 Vol. heretofore filed with the Supreme Court of the State of California on the appeal to said Court.

2. The opinion in this proceeding filed January 24, 1957, including the opinion filed on said date in *The Ivanhoe Irrigation District, Plaintiff and Appellants, vs. All Parties and Persons, Etc., Respondents* (L. A. No. 23043 and the opinion filed on said date in *Madera Irrigation District, Plaintiff and Appellants; vs. All Parties and Persons, Etc., Respondents* (Sacramento No. 6489).

3. The petition of the Santa Barbara County Water [fol. 820] Agency for a rehearing filed herein, the answers thereto and all the *amicus curiae* briefs filed in support thereof or opposition thereto, and the answers to such *amicus curiae* briefs, and the order of the Supreme Court of the State of California of February 19, 1957 denying a rehearing.

4. This Notice of Appeal.

III. The questions presented by this appeal all relate to the validity of the previously identified contract between the United States and The Santa Barbara County Water Agency, an agency of the State of California, providing for delivery of a water supply to the Agency and its Member Units from the Federal Cachuma Unit of the Santa Barbara County, California, Project for municipal and irrigation purposes for a period of 40 years at specified rates per acre foot of water delivered, which contract was executed pursuant to the Federal reclamation laws and includes the excess land provisions of said laws; and to the validity of the contracts of the Agency with its Member Units, being the hereinabove specified City and County Water Districts, for the furnishing of a water supply to them for municipal and irrigation purposes, which latter contracts also include the excess land provisions of the Federal reclamation laws.

[fol. 821] These questions are as follows:

1. Section 46 of the *Omnibus Adjustment Act* of 1926 (44 Stat. 649 (1926), 43 U.S.C. sec. 423e (1952)) precludes delivery of water from Federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

(a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

(b) Is this section valid or does it deprive owners of more than 160 acres of land in Federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

(c) The California *Irrigation District Federal Cooperation Law* (Calif. Water Code secs. 23175 *et seq.*) provides for the delivery and distribution of water acquired under any contract with the United States "under the relevant acts of Congress" (*id.* sec. 23197(a)), and "in accordance [fol. 822] with the applicable acts of Congress" (*id.* sec. 23200). Is this section 46, one of the "relevant" and "applicable" acts of Congress referred to in the California *Irrigation District Federal Cooperation Law?*

(d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed [is or] is not an unlimited title in the United States?"

(e) Does section 8 of the *Reclamation Act of 1902* (32 Stats. 390 (1902), 43 U.S.C. secs. 372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contract involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of California have jurisdiction to determine:

(a) What water rights or title the United States has acquired?

[fol. 823] (b) What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a Federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in paragraph 8 are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* deprive the owners thereof of those rights?

8. Does Federal law provide that upon repayment the Agency must be granted title to "works for the storage and distribution of water to and by the agency" . . . "not dependent on a future and necessarily discretionary act of Congress"?

[fol. 824] 9. Does Federal law require that the contract specify an obligation for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years?

10. Does section 8 of the *Reclamation Act of 1902* submit the United States to the provisions of the State law regulating public utilities where Congress by sections *9(c) and 9(e) of the Reclamation Project Act of 1939* has provided a system of regulation for Federal projects which may be inconsistent with the State system?

11. Sections 9(c) and 9(e) of the *Reclamation Project Act of 1939* (53 Stat. 1196 (1939), 43 U.S.C. secs. 485h(c), 485h(e) 1952)) authorize the Secretary of the Interior to enter into contracts to furnish water for

irrigation and municipal purposes from Federal reclamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon landowners a [fol. 825] burden "under which they may suffer the loss of water rights at the discretion of the United States" and is therefore "contrary to well established constitutional principles and protections"?

Vern B. Thomas, District Attorney of the County of Santa Barbara, State of California, Lawrence M. Parma, Deputy District Attorney of the County of Santa Barbara, State of California, By Lawrence M. Parma, Attorneys for The Santa Barbara County Water Agency, created by the laws of the State of California, Appellants, 15 West Carrillo Street, P. O. Box 1288, Santa Barbara, California.

[fol. 826] Proof of Service (omitted in printing).

[fol. 827] SUPREME COURT OF THE UNITED STATES

Nos. 122, 123, 124, and 125, October Term, 1957

THE IVANHOE IRRIGATION DISTRICT and the STATE OF CALIFORNIA, Appellants,

v.

COURTNEY McCRACKEN et al.; THE MADERA IRRIGATION DISTRICT and the STATE OF CALIFORNIA, Appellants,

v.

CARL F. STEINER et al.; THE MADERA IRRIGATION DISTRICT, Appellant,

v.

PHILLIP and JANE E. ALBONICO; and THE SANTA BARBARA COUNTY WATER AGENCY, Appellant,

v.

MAURICE A. BALAAM et al.

Appeals from the Supreme Court of the State of California.

ORDER POSTPONING JURISDICTION—October 14, 1957

The statement of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the cases on the merits. The cases are consolidated and a total of two hours allowed for oral argument.

October 14, 1957